Supreme Court, U. S.
FILED
DEC 19 1973
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO, et al., *Petitioners,*

v.

ASCENSION VIALPANDO, for herself and her minor child, SABRINA VIALPANDO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 9, 1973

CERTIORARI GRANTED NOVEMBER 5, 1973

INDEX

	Page
1. General Docket of the United States Court of Appeals for the Tenth Circuit, Case No. 72-1218	1
2. Section 3140 of the HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION (3/11/57)	3
3. Section 3140 of the HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION (4/22/64)	4
4. Letter dated September 26, 1969, from Department of Health, Education, and Welfare to "State Agencies Administering Approved Public Assistance Plans"	7
5. Complaint filed on July 22, 1970, in the United States District Court for the District of Colorado, Civil Action No. C-2449, on behalf of Ascension Vialpando for herself and her minor child, Sabrina Vialpando, and both on behalf of all others similarly situated, against Con F. Shea, individually and as Executive Director of the Department of Social Services, State of Colorado, et al.	11
6. Answer filed on September 30, 1970, on behalf of all defendants except Melvin Pobanz, individually and as Director of the E Paso County Department of Public Wefare, in the United States Dstrict Court for the District of Colorado, Civil Action No. C-2449	18
7. Answer filed on December 31, 1970, on behalf of defendant Melvin Pobanz individually and as Director of the El Paso County Department of Public Welfare, in the United States District Court for the District of Colorado, Civil Action No. C-2449	39
8. Memorandum to Douglas D. Doane, Director, Legal Division, Colorado Department of Social Services, from Ray M. Freeman, Director, Research and Statistics, Colorado Department of Social Services, dated October 6, 1971, regarding "Analysis of Earnings Expense Allowances," (together with supporting statistical data as originally filed with the District Court)	40
9. Memorandum Opinion and Order of the United States District Court for the District of Colorado, Civil Action No. C-2449, dated January 13, 1972	42
10. Judgment filed in the United States District Court for the District of Colorado, February 17, 1972, Civil Action No. C-2449	50
11. Affidavit, and attachments, of John H. Jones, Director of Program Planning and Development Division of the Colorado Department of Social Services, concerning the derivation of Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual filed February 29, 1972, Civil Action No. C-2449	53
12. Memorandum Opinion of the United States District Court for the District of Colorado, March 9, 1972, Civil Action No. C-2449	78
13. Assistance Payments Regional Memorandum Number 12, dated May 15, 1972	84
14. Opinion of the United States Court of Appeals, Tenth Circuit, dated March 22, 1973, Case No. 72-1218	87

GENERAL DOCKET

United States Court of Appeals

for the Tenth Circuit

VIALPANDO V. SHEA, Nos. 72-1218 and 72-1345.

DATE	FILINGS—PROCEEDINGS
3-23-72	Cause docketed; motion for stay of execution pending appeal and for other relief, orig. & 6cc. w/attached memorandum supporting motion for stay.
3-27-72	Appearance—Appellee—Kin, Armour.
3-28-72	Appearance—Appellants—Dunbar, Moore, Doane and Lennahan.
3-30-72	Appellees opposition to appellants motion for stay of execution pending appeal—0 & 3cc— c/s 3-31-72. Memorandum in opposition to appellants motion for stay of execution pending appeal—O & 3ccc—c/s 3-31-72. (Fwd. to Doyle) (Fwd. to Lewis and Barrett—3-31-72)
3-31-72	Order: Stay of execution of judgment entered by Dist Court in Civil Action C-2449 on 2-18-72 is granted pending appeal and until further order of this Court. The stay shall be effective against any proceedings to enforce said judgment. Appellants, in connection with their appeal from the trial court's judgment are relieved of the obligaton to file either a bond for costs on appeal or a supersedeas bond. (Lewis, Barrett, Doyle)
4-3-72	Appearance—Appellee (For Melvin Pobanz etc·) Palermo, Johnson
4-11-72	Appellees Motion for accelerated briefing schedule and hearing date—0 & 3cc—c/s.
4-17-72	State appellant's opposition to appellee's motion for accelerated briefing schedule and hearing date—orig. & 3cc. Docketing statement, orig. & 3cc.
4-18-72	Appellees' Brief—0 & 6cc—c/s. (Fwd. to Lewis and McWilliams together with motion for accelerated schedule and opposition thereto).
4-21-72	Stipulation of parties of consolidation of appeals of Con F. Shea, et al., Melvin Pobanz—0 & 3cc.
4-25-72	Order: Appellees' motion for accelerated briefing schedule and hearing date DENIED. (Lewis, McWilliams)
5-11-72	Record on appeal, Vol· I, orig. (302 pp.). Order—assigned to General Calendar; appellant's brief due 6-21-72—Lewis
6-20-72	State Defendants Aplts motion for ext. of time to file brief—0 & 3cc—c/s Order: Aplts. granted to 6-23-72 to file brief—HKP—cnsl. notfd.

GENERAL DOCKET

United States Court of Appeals

for the Tenth Circuit

DATE	FILINGS—PROCEEDINGS
6-23-72	Appellant's brief—25cc—c/s
6-23-72	RECORD ON APPEAL—Volume I-3cs
7-26-72	Appellee's brief—0 & 6cc—c/s
8-9-72	Set for Hearing—Special Session—Denver—September 1972
8-9-72	Appellants motion for ext. of time to file reply brief—0 & 3cc—cs (Fwd. to Panel).
8-14-72	Order: Appellants, except Pobanz, granted ext. of time to 9-1-72 to file reply brief—Panel.
9-1-72	Appellant's reply brief—25cc—c/s
9-18-72	Argued and submitted—Lewis, Pickett, McWilliams.
11-20-72	Letter request to forward copies (included) of Conover v. Hall decision from Calif. Ct. of Appeals No. 3 Civil 13289, to Panel—0 & 3cc—c/s Forwarded to panel.
12-22-72	Appellees' supplemental authority—0 & 3cc—c/s—Forwarded to Panel.
1-26-73	Appellees' supplemental authority—0 & 3cc—c/s—fwd. to panel.
3-22-73	Opinion—Lewis, Pickett, McWilliams Judgment: Affirmed.
4-6-73	Appellants' motion for stay of mandate pending application for certiorari and for other relief and memorandum in support thereof—0 & 3cc—c/s. (Fwd. to Panel—4-9-73).
4-12-73	Order: Appellant's motion for stay of mandate pending application for certiorari GRANTED to 5-12-73. (Lewis, Pickett, McWilliams)
4-16-73	Appellee's motion to reconsider granting of appellant's motion for stay pending application for certiorari—Orig. —c/s (Fwd. to Panel).
4-24-73	Order: Appellees' motion for Court to reconsider its Order granting appellants' motion for stay of mandate pending application for cert. is DENIED. (Lewis, Pickett, McWilliams)
5-14-73	Certified copy of order from Supreme Court that petition for writ of certiorari filed on 5-9-73. (No. 72-1513)
11-12-73	Certified copy of order from Supreme Court granting petition for writ of certiorari on 11-5-73.

Eligibility and Payments to Individuals—Need—3/11/57.3140. Specific Applications—Income and Resources

1. Employment Expenses

A State public assistance agency may establish a reasonable minimum money amount to represent the combined additional cost of three items — food, clothing, and personal incidentals — for all employed persons. The State plan may provide that other items of work expense will be allowed when there is a determination that such expenses do, in fact, exist in the individual case. On the basis of such a finding in fact of the existence of other expenses related to employment, money amounts for such expenses may be added above the minimum flat amount, provided no duplication of items exists. This method is acceptable, whether the items of work expense are included in a State's standard for requirements, or whether the agency uses the method in arriving at net income in determining resources.

The purpose of this interpretation is to help States simplify administration by eliminating the need for individual case determinations of certain common needs of employed persons. Increased food necessitated by increased activity along with increased clothing and grooming necessitated in holding a job may be standardized and accepted as common needs of all employed persons. The State agency should be in a position to support the reasonableness of any minimum money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients.

Eligibility Assistance, and Services—Need—4/22/64

3140. Specific Applications—Income and Resources

1. Employment Expenses

Sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a(14) of the Social Security Act require that, in considering income and resources, the State agency shall take into consideration any expenses that are *reasonably attributable* to the earning of any such income. These requirements became effective July 1, 1963, with the exception of title XVI, which is effective with the approval of the State plan. For similar provision applicable in the Community Work and Training Program under title IV, see IV-3462.21 and IV-3463.

Interpretation

The provision for the consideration of expenses of earning income was included in the law to insure that all States will recognize work expenses in determining net income. Also, if work expenses are not considered by a State agency in its plan material, it has the effect of failing to provide an incentive for working since that portion of the family income spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter.

Increased food necessitated by greater activity, along with the additional clothing and its care, and better grooming necessitated in holding a job, *may be standardized* as accepted, common needs of all employed persons. There-

fore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional cost of these three items — food, clothing, and personal incidentals — for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. This method is acceptable, whether the items of work expenses are included in a State's standard for requirements, or whether the agency uses the method of deduction of work expenses from earned income in arriving at the individual's net income from his employment.

Items of work expenses must be allowed when there is determination that such expenses do, in fact, exist in the individual case. On the basis of a finding of the existence of expenses related to employment, money amounts for such expenses must be added to the individual's needs or deducted from his earned income in such a way as to assure that no duplication of items will exist.

In addition to the increased cost of food, and additional amounts of clothing, care of clothing and personal incidentals, other expenses reasonably attributable to earning income might include:

Special safety or protective clothing items or uniforms and the cost of cleaning or laundering of these special items.

Participation in the "snack break" where it is the custom for that employment.

Transportation to and from work and transportation on job if not reimbursed by the employer.

Contributions to collections for employee benefits, etc., as are found to be necessary in connection with holding the job.

Tools and licenses required for the job.

Dues to unions, business organizations, employee clubs, or similar assessments.

Educational expenses related to employment, including any necessary publications.

Care of child(ren) at home or in day-care facilities, cost of more expensive ready prepared foods for the family when the housewife works.

Special safety devices needed by handicapped people not furnished by the employer.

Requirement for State Plans

Effective July 1, 1963, a State plan under titles I, IV, X, and XIV, and, effective on approval, a State plan under title XVI, must provide that, in determining need, any expenses reasonably attributable to the earning of income will be taken into consideration.

H.T. No. 22

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE

Washington, D.C. 20201

Assistance Payments
Administration

September 26, 1969
SRS-APA-PS

TO STATE AGENCIES ADMINISTERING
APPROVED PUBLIC ASSISTANCE PLANS

Subject: Conversion Tables for the Application of the Disregard of the First $30 and 1/3 of the Remainder of the Gross Income of AFDC Family

The attached Conversion Tables have been developed for your optional use in cooperation with the National Center for Social Statistics and staff of several Regional Offices as a tool for applying the disregards mandated in Section 402(a)(8)(A) (ii) of the Social Security Act and SRS Program Regulation 20-7 Section 233.20(e) 11 (ii) (b).

Tables have been devised according to weekly, (Column 1), bi-weekly, (Column 2), semi-monthly, (Column 3) and monthly (Column 4) pay periods, whichever is appropriate for the individual cases. The monetary amounts are expressed as gross earnings.

Column 5 represents the amount remaining after the application of the disregard of the first $30 and 1/3 of the remainder. These amounts have been rounded for $.50 (fifty cents) and over to the nearest dollar. For State

agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables may be further adjusted as demonstrated below,

For example: In a situation where a State agency has an established standard of a $50 per month for all mandatory payroll expenses and all occupational expenses, the attached tables for such a State agency could be adapted to read as follows:
Conversion Tables of Gross Earnings by Frequency of Pay Period. The Application of the Disregard of the First $30 and 1/3 Remainder of AFDC Family Gross Income and Deduction of State Standard of Expenses Reasonably Attributable to the Earnings of One Wage Earner.*

(1) Weekly	(2) Bi-Weekly	(3) Semi-Monthly	(4) Monthly	(5) Net Amount Remaining Less $30 and 1/3 of Expenses of One Wage Earner
Up To:	Up To:	Up To:	Up To:	
24.06 - 24.40	48.12 - 48.80	52.13 - 52.87	104.25 - 105.74	0
24.41 - 24.74	48.81 - 49.49	52.88 - 53.62	105.75 - 107.24	1.00
24.75 - 25.09	49.50 - 50.19	53.69 - 54.37	107.25 - 108.74	2.00
25.10 - 25.44	50.20 - 50 88	54.38 - 55.12	108.75 - 110.24	3.00
25.45 - 25.78	50.89 - 51.57	55.13 - 55.87	110.25 - 111.74	4.00

Methodology for application of the mandated disregard in AFDC (AFDC family eligible in accordance with Section 402(a)(8) (D) of the Social Security Act.)

.1 If State Agency has opted to disregard not more than $5 a month per recipient of any income, deduct this designated amount.

(*For each additional wage earner, deduct amount designated by State agency.)

.2 Disregard all the earned income any dependent child who is a full or part-time student who is not a full-time employee.

3 . From the remaining gross income of the AFDC family apply the disregard of the first $30 and 1/3 of the remainder.

4. From the remaining amount in 3 above, subtract expenses reasonably attributable to the earning of income for each wage earner (excepting those expenses attributable to the earnings of a dependent child whose income is disregarded in accordance with 2 above).

5. If State agency has opted to provide for conservation of income for future identifiable needs of a child deduct the applicable amounts.

6. The remainder from 4 and 5 above, whichever is applicable, plus all other available income is subtracted from the amount used by the State to determine need and the amount of the assistance payment.

Determination or redetermination of eligibility for AFDC family who has not been receiving AFDC for any one of the four months preceding the month of the determination.

1. The total AFDC family income, earned and unearned, less only the expenses reasonably attributable to earning of income for each wage earner is to be applied to the appropriate amount used by the State to determine need.

2. If there is a budget deficit without the application

of any of the disregards and conservations (that is the disregard of student earned income, first 30 and 1/3 remainder, setting aside for future needs of a child, and the disregard of up to $5 per recipient of any income — Sections 402(a)(8) A (i) & (ii), 402(a)(8)B(i) & (ii) of the Social Security Act, respectively then the method as identified in the above is applicable.

3. If there is no budget deficit, that is the total AFDC family income exceeds the apropriate amount used by the State to determine need, the family is not eligible.

Sincerely,
STEPHEN P. SIMONDS
Commissioner

IN THE

UNITED STATES

DISTRICT COURT

FOR THE

DISTRICT OF COLORADO

Civil Action No. C-2449

[Filed July 22, 1970]

G. WALTER BOWMAN, Clerk

COMPLAINT

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs.

vs.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; PETER SAMAC, ERNEST J. BLOEDORN, DAMIAN P. DUCY, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAME H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants.

I. JURISDICTION

This is an action for injunctive and declaratory relief under 42 U.S.C. §1983 to redress the deprivation under color of state law of rights, privileges and immunities secured to the Plaintiff by the statutes and the Constitution of the United States. Jurisdiction is based on 28 U.S.C. §1343(3) and (4). Declaratory judgments are authorized by 28 U.S.C. §2201 and 2202.

II. THREE-JUDGE COURT

One of Plaintiff's claims involves the constitutionality of state welfare regulations. Thus, a three-judge court should be convened under 28 U.S.C. §2282 and 2284.

III. CLASS ACTION

A. Plaintiffs bring this action pursuant to Rule 23(b)(2) and (3). The members of this class are too numerous to make joinder practicable; there are common questions of law and fact; Plaintiff's claims are typical of the claims of the class; and Plaintiffs will fairly and adequately protect the interests of the class.

B. The class can be defined as all AFDC recipients in the State of Colorado who are employed and whose reasonable employment expenses exceed $30.00.

IV. DEFENDANTS

The State Board of Social Services administers the Colorado Department of Social Services and makes AFDC rules and regulations binding on all counties in the State. The Colorado Department of Social Services through Defendant Con F. Shea, and the Division of Public Welfare through Defendant Charline F. Birkins, enforce the AFDC rules and regulations and supervise the county departments of public welfare. The El Paso County Department of Public Welfare through Defendant Melvin Pobanz, administers the AFDC program in El Paso County, subject to the rules and regulations of the State Board of Social Services.

V. THE FACTS

Ascension Vialpando and her daughter, Sabrina Vialpando (age 2), live at 320 E. Iowa in Fountain, Colorado.

Mrs. Vialpando cares for her 78 year old father, and two of her brothers also live in the household. Mrs. Vialpando works at Sno-White Laundry in Colorado Springs, Colorado, which involves a 40-mile round trip to work each day. She earns approximately $208.00 per month.

Prior to July 1, 1970, Mrs. Vialpando received an AFDC grant of$74.00 per month. She was allowed employment expenses of $47.30 in mileage and $63.81 in car payments on a 1969 Volkswagon. The El Paso County Department of Public Welfare had promised to pay her monthly child care expenses of $40.00, but this has never been done.

On July 1, 1970, Mrs. Vialpando was terminated from her grant under §4313.13 of the Colorado Manual of Public Assistance. (See Exhibit A.). She now brings home $56.89 after child care and employment expenses, and is unable to properly care for herself and her minor child.

VI. THE SOCIAL SECURITY ACT

Section 402(a) (7) of the Social Security Act, 42 U.S.C. §602(a)(7) requires the States to deduct all reasonable employment expenses in determining the net income of AFDC receipients.

VII. H.E.W. REGULATIONS

The Department of Health, Education and Welfare has interpreted §402(a)(7) in the Handbook of Public Assistance Administration at §3140. This regulation allows the States to standardize three items of employment expense — food, clothing and personal incidentals. All other employment expenses must be itemized in each individual case. (See Exhibit B)

VIII. THE COLORADO AFDC PLAN

Effective July 1, 1970, the Colorado Board of Social Services adopted regulation 4313.13 limiting to a maximum of $30.00 the amount of expenses that can be deducted from employment income. (See Exhibit C.)

IX. CONSTITUTIONAL CLAIM

Section 4313.13 of the Colorado Manual of Public Assistance imposes an arbitrary maximum on employment expense in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

X. STATUTORY CLAIM

Section 4313.13 of the Colorado Manual of Public Assistance violates 402(a)(7) of the Social Security Act and §3140 of the Handbook of Public Assistance Administration.

XI. DAMAGES

As a result of Defendants' imposition of a maximum on employment expenses for AFDC recipients, Plaintiffs suffer damages of $74.00 per month beginning July 1, 1970.

In addition, Plaintiff suffer damages of $40.00 per month because of Defendants' refusal to pay child care expenses.

XII. NEED FOR EXTRAORDINARY RELIEF

As a result of Defendant's action, Ascension Vialpando must support herself and her child on a net income of $56.89 per month. This is irreparable injury which will

continue unless the Defendants are immediately enjoined by this Court.

XIII. RELIEF REQUESTED

On behalf of herself and all others similarly situated, Plaintiffs ask the Court.

1. To assume jurisdiction and convene a three judge court.

2. To enter judgment declaring §4313.13 of the Colorado Manual of Public Assistance unconstitutional and contrary to §402(a)(7) of the Social Security Act.

3. To enjoin Defendants from standardizing employment expenses under the AFDC program except in accordance with §3140 of the Handbook of Public Assistance Administration.

4. To enter judgment on behalf of the Plaintiff in the amount of AFDC benefits wrongfully withheld.

5. To grant such other relief as the Court deems apprporiate.

LEGAL SERVICES OFFICE
OF EL PASO CO.

J. GREGORY WALTA,

DAVID H. BARNHIZER,
Attorneys for Plaintiff
300 Colorado Commercial
Bank Bldg.
Colorado Springs, Colorado
Phone: 471-0380

PA-75 (4/70)

COLORADO DEPARTMENT OF
SOCIAL SERVICES — DIVISION OF WELFARE
NOTICE OF PROPOSED ACTION
TO TERMINATE BENEFITS
EL PASO COUNTY

VIALPANDO, Ascension, Payee's Name; 320 E. Iowa, Fountain, Colo. 80817, Address; 38100-02, H.H. Number.

I.

Our records show that you (or one or more persons in your household) are no longer eligible for welfare benefits. Such assistance will be stopped as of July, 1970.

II.

REASON FOR PROPOSED TERMINATION OF ASSISTANCE AND WELFARE RULES WHICH APPLY: 4313.13 — State Board action effective 1-July-1970 limited to a maximum of $30.00 the amount of expenses that can be deducted from employment income. Prior to 1 July 1970 you were allowed to deduct $47.30 mileage and $63.81 car payments as employment expense. Under the new rules you are allowed only $30.00 expenses and your employment income exceeds your ADC budget. Therefore, your welfare benefits must be discontinued.

III.

If you do not agree, you have the right to a hearing before this termination to:

Appear personally to give additional facts or information,

Confront, challenge, and cross-examine the people who made the decision,

Bring a friend, relative or lawyer to help you.

IV.

If you want to meet with us before your welfare assistance is stopped, the following time has been reserved for you for this purpose: Afternoon of June 23. Please call 471-5696 if you desire an appointment.

V.

If we do not hear from you, or you do not appear at the time set aside above, we will assume that you do not wish to object to having your assistance stopped.

EXHIBIT A

CHARLES ROOT,
Signature of Person
Responsible for Decision
Eligibility Supervisor, Title
June 16, 1970
Date of Mailing of this Notice

Exhibit "B" to Complaint, "Section 3140 of the *Handbook of Public Assistance Administration* (4/22/64)," appears as Item 3 of this APPENDIX.

Exhibit "C" to Complaint, "Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual," appears as Exhibit "J" to Item 11 of this APPENDIX, which is Affidavit of John H. Jones.

(Cert. of Mailing Omitted)

United States District Court

Civil Action No. C-2449

[Filed September 30, 1970]
G. WALTER BOWMAN, Clerk

ANSWER

COME NOW defendants Con F. Shea, individually and as Director of the Colorado Department of Social Services; Charline J. Birkins, individualy and as Director of the Colorado State Division of Public Welfare; Peter Samac, Ernest J. Bloedorn, John L. Haley, James A. Henderson, Gail F. Ouren, Henry J. Tupper, Willie E. Anthony and James H. Vincent, individualy and as members of the Colorado State Board of Social Services, by and through their attorneys, and for their Answer to plaintiffs' Complaint, state and allege:

I.

The allegations of Paragraph I of plaintiffs' Complaint are denied.

II.

The allegations of Paragraph II of plaintiffs' Complaint are denied.

III.

The allegations of Paragraph III of plaintiffs' Complaint are denied.

IV.

The allegations of Paragraph IV of plaintiffs' Complaint are admitted.

V.

Defendants are without sufficient knowledge or information as to the truth of the allegations in Paragraph V of plaintiffs' Complaint, and therefore deny said allegations.

VI.

The allegations of Paragraph VI of plaintiffs' Complaint are denied in that plaintiffs only state their interpretation of the requirements of 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7). The above law referred to by plaintiffs requires in relevant part:

> "A state plan for aid and services to needy families with children must . . . except as may be otherwise provided in clause (8), provide that the state agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . AS WELL AS ANY EXPENSES REASONABLY ATTRIBUTABLE TO THE EARNING OF ANY SUCH INCOME." (Emphasis supplied.)

VII.

The allegations of Paragraph VII of plaintiffs' Complaint are denied in that plaintiffs only state their interpretation of the Department of Health, Education, and Welfare interpretation of the requirements of 402(a)(7) of the Social Security Act, which is found in the Handbook of Public Assistance Administration at Section 3140, and in SRS Program Regulation 20-7 of the Department of Health, Education, and Welfare, effective January 29, 1969. (Defendants' Exhibit A.)

It is further alleged that prior to the Board of Social Services adopting the challenged regulation of the Department of Social Services on July 1, 1970, that the Regional Office of the Department of Health, Education, and Welfare in Denver approved the said regulation.

VIII.

The allegations of Paragraph VII of plaintiffs' Complaint are admitted except it is denied there is a maximum of $30.00 employment expense that can be deducted. It is affirmatively alleged that an allowance of $30.00 per month is made for employment expenses as set out in Exhibit C to plaintiffs' Complaint.

IX.

The allegations of Paragraph IX of plaintiffs' Complaint are denied.

X.

The allegations of Paragraph X of plaintiffs' Complaint are denied.

XI.

The allegations of Paragraph XI of plaintiffs' Complaint are denied.

XII.

The allegations of Paragraph XII of plaintiffs' Complaint are denied.

AFFIRMATIVE DEFENSES

1. The rule of the Department of Social Services challenged by plaintiffs does not violate the Social Security Act provisions or the regulations of the Department of Health, Education, and Welfare which were in effect at the time of the filing of this action.

2. The rule of the Department of Social Services challenged by plaintiffs does not violate the equal pro-

tection clause of the Fourteenth Amendment to the United States Constitution.

3. The alleged employment expenses of plaintiff Ascension Vialpando, if they are her employment expenses, are not reasonably attributable to the earning of her income but are unreasonable.

4. Plaintiff Ascension Vialpando has not pursued viable and effective remedies available through the pre-termination and appellate hearing processes of the County and State Department of Social Services.

WHEREFORE, defendants pray

1. that plaintiffs' Complaint be dismissed;

2. that judgment enter in favor of the defendants; and

3. that the Court grant such further relief as may be necessary and proper.

DUKE W. DUNBAR,
Attorney General
JOHN P. MOORE,
Deputy Attorney General
BY DOUGLAS D. DOANE,
Special Assistant
Attorney General
104 State Capitol
Denver, Colorado 80203
Attorneys for State Defendants

(Cert. of Mailing Omitted in Printing)

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

Received February 10, 1969
State of Colorado
Dept. of Social Services

SRS Program Regulation 20-7

January 29, 1969

TO:

State Administrators and other Interested Organizations and Agencies.

SUBJECT:

Ttitles I, IV, X, XI, XIV, and XVI of the Social Security Act: Need and Amount of Assistance.

CONTENT:

Final regulations clarifying previous policy and implementing sections 2(a) (10) (A), 402(a)(7) and (8), 402(a)(23), and 1002(a)(C), 1402(a)(8)(A), 1602(a)(14)(D), 1109 and 1119 of the 1967 amendments to the Social Security Act and section 109 of the 1967 amendments to the Economic Opportunity Act, covering State plan requirements and conditions of Federal financial participation in public assistance payments.

EFFECTIVE DATE:

The regulations are effective on date of publication in the *Federal Register*: January 29, 1969.

BACKGROUND:

This subject was covered in Interim Policy Statement No. 4, issued to States on May 31, 1968, and

was published in the *Federal Register* on July 17, 1968, under the title "Need-Requirements for State Public Assistance Plans." The final regulations will be codified in Title 45, Chapter II, Part 233 of the Code of Federal Regulations.

MANUAL REFERENCE:

Handbook of Public Assistance, Part IV-3100 Guide materials are in preparation and will be issued at the earliest opportunity.

INQUIRIES TO:

SRS Regional Commissioners.

JOSEPH H. MEYERS,
Acting Administrator

EXHIBIT "A"

PR 20-7

TITLE 45 — PUBLIC WELFARE

CHAPTER II — SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Interim Policy Statement No. 4 setting forth the regulations for the programs administered under Titles I, IV-Part A, X, XIV and XVI of the Social Security Act, with respect to Need, was published in the *Federal Register* of July 17, 1968 (33 F.R. 10230). Views of interested persons were requested, received and considered, and, in the light thereof, certain changes in the regulations were made. The following are the major

changes: (1) The method for disregard of earned income has been modified. In arriving at the amount of earned income to be applied against the assistance budget the amount to be disregarded is to be deducted from gross income rather than from net income. Next, the amount allowed for work expenses is to be deducted. The remaining amount is then applied against the assistance budget. (Sec. 233.20(a)(7)). (2) The regulations now permit several options for the disregard of income in the AFDC program prior to July 1, 1969, not included in the Interim Policy (Sec. 233.20(a)(11)(i) and (ii)). (3) In regard to the requirement to adjust AFDC standards by July 1, 1969 the regulations now make it clear that while States must update their standards, if the States do not have the money to pay according to such standards they may make a ratable reduction. (Sec. 233.20(a)(2)(ii)).

Accordingly, such regulations, as amended, are hereby codified by adding a new section 233.20 in part 233. Chapter II of Title 45 of the Code of Federal Regulations as set forth below.

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal statute.

(2) *Standards of assistance.* (i) Specify a State-wide standard, expressed in money amounts, to be used in

determining (*a*) the need of applicants and recipients and (*b*) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State.

(iv) Include the method used in determining needs, which must be one of the three methods described in "Guides and Recommendations" or a comparable method which meets the conditions specified in such guides and is approved by the Assistance Payments Administration.

(v) If the State agency includes special need items in its standard, (*a*) describe those that will be recognized, and the circumstances under which they will be included, and (*b*) provide that they will be considered in the need determination for all applicants and recipients requiring them.

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy

individuals, (*a*) specify the persons whose needs will be included in the individual's need, and (*b*) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(3) *Income and resources; OAA, AFDC, AB, APTD, AABD.* (i) Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased.

(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment: (*a*) all income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, and will first be applied to maintenance costs; (*b*) if agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their needs as determined by the State-wide standards; (*c*) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered; (*d*) current payments of assistance will not be reduced because of prior overpayments unless the

recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient willfully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods; and (*c*) income and resources will be reasonably evaluated.

(iii) Provide that no inquiry will be made of the amount of earnings of a child under 14 years of age.

(iv) Provide that, in determining the availability of income and resources, the following will not be included as income: (*a*) income equal to expenses reasonably attributable to the earning of income; (*b*) loans and grants, such as scholarships obtained and used under conditions that preclude their use for current living costs; and (*e*) home produce of an applicant or recipient, utilized by him and his household for their own consumption.

(v) Provide that agency policies assure that when support payments by absent parents have been ordered by a court, a regular amount of income is available monthly to meet the determined needs of the mother and children, whether or not the support payments are received regularly, and the agency does not delay or reduce public assistance payments on the basis of assumed support which is not actually available.

(vi) If the State agency holds relatives responsible for the support of applicants and recipients, (*a*) include an income scale for use in determining whether responsible relatives have sufficient income to warrant expectation that they can contribute to the support of applicants or recipients, which income scale exceeds a minimum level

of living and at least represents a minimum level of adequacy that takes account of the needs and other obligations of the relatives; and (*b*) provide that no request will be made for contributions from relatives whose net cash income is below the income scale. In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21.

(vii) If the State agency establishes policy under which assistance from other agencies and organizations will not be deducted in determining the amount of assistance to be paid, provide that no duplication shall exist between such other assistance and that provided by the public assistance agency. In such complementary program relationships, non-duplication shall be assured by provision that such aid will be considered in relation to:

(*a*) the different purpose for which the other agency grants aid, such as vocational rehabilitation; (*b*) the provision of goods and services that are not included in the State-wide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or housing and urban development relocation adjustment payments for items not included in assistance standards; or (*c*) the fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the State-wide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

(viii) Provide that payment will be based on the determination of the amount of assistance needed and that, if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly State-wide.

(ix) Provide that the agency will establish and carry out policies with references to applicants' and recipients' potential sources of income that can be developed to a state of availability.

(4) *Disregard of income common to OAA, AFDC, AB, APTD, or AABD.* (1) (i) If the State chooses to disregarding or setting aside income, specify the amount that is first to be disregarded, but not more than $7.50 ($5 in AFDC) per month, of any income of an individual, child or relative claiming assistance. All income must be included such as social security or other benefits, earnings, contributions from relatives, or other income the individual may have.

(ii) Provide that, in determining need and the amount of the assistance payment, the following will be disregarded: (*a*) the value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons; (*b*) the value of the United States Department of Agriculture donated foods (surplus commodities); and (*c*) any highway relocation assistance paid under the Federal-Aid Highway Act of 1968.

(iii) Provide that income and resources which are disregarded or set aside under this part will not be taken into consideration in determining the need of any other individual for assistance.

(5) *Disregard of income applicable to OAA, AB, APTD or AABD.* Provide that, in determining need and

amount of assistance, (i) with respect to payments made to or on behalf of an individual or to or on behalf of another person, for any month, under Title I or II of the Economic Opportunity Act of 1964 or under any program assisted under such title, (*a*) the first $85 plus one-half of the excess over $85 will be disregarded and (*b*) any excess over such amount will be taken into consideration in determining the need of any other individual for assistance only to the extent they are made available to or for such other individual (effective July 1, 1969, not applicable; for this purpose payments under Title I or II of the Economic Opportunity Act are described in CA Memo 23-A, dated August 26, 1966, issued by the Office of Economic Opportunity); and (ii) training incentive payments and expense allowances made to an individual or to any other person under the Manpower Development and Training Act of 1962, as amended, will be disregarded.

(6) *Disregard of earned income; definition.* Provide that for purposes of disregarding earned income the agency policies will include: (i) A definition of "earned income" in accordance with the provisions of subdivisions (iii) through (viii) of this subgraph; and

(ii) Provision for disregarding earned income for the period during which it is earned, rather than when it is paid, in cases of lump-sum payment for services rendered over a period of more than one month.

(iii) The term "earned income" encompasses income in cash or in kind earned by a needy individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from

wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. In considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for public assistance.

(iv) With reference to commissions, wages, or salary, the term "earned income" means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(v) With respect to self-employment, the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the "business expenses," i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(vi) The definition shall exclude the following from "earned income": Returns from capital investment with respect to which the individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from "earned income"); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment, (for example, pensions and benefits, such as United Mine

Workers' benefits or veterans' benefits).

(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources.

(7) *Disregard of earned income; method.* (i) Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of "earned income," and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

(ii) In applying the disregard of income under subparagraph (11)(ii)(*b*) of this paragraph to an applicant for AFDC, there will be a preliminary step to determine whether there is eligibility without the application of any AFDC provisions for the disregard or setting aside of income. If such eligibility exists, the next step is to determine need and the amount of assistance by disregarding income and deducting work expenses in ac-

cordance with the method described in subdivision (i) of this subparagraph.

(8) *Disregard of earned income applicable only to OAA, APTD, or AABD.* If the State chooses to disregard earned income, specify the amount to be disregarded of the first $80 per month of income that is earned by an aged or disabled individual claiming OAA, APTD, or AABD, who is not blind, but not more than $20 per month plus one-half of the next $60 of such earned income.

(9) *Disregard of income and resources applicable only to APTD and/orAABD.* If the State chooses to disregard income (which may be additional to the income disregarded under subparagraph (8) of this paragraph) or resources for a disabled individual to achieve the fulfillment of a plan of self-support, provide that the amounts of additional income and resources will not exceed those found necessary for the period during which the individual is actually undergoing vocational rehabilitation, and specify the period, not in excess of 36 months, for which such amounts are to be disregarded.

(10) *Disregard of income and resources applicable only to AB or AABD.* Provide that, in determining the need of individuals who are blind, (i) the first $85 per month of earned income of the individual plus one-half of earned income in excess of $85 per month will be disregarded; and (ii) if the individual has a plan for achieving self-support, such additional income and resources as are necessary to fulfill such plan will be disregarded for a period not in excess of 12 months. Such additional income and resources may be disregarded for an additional period not in excess of 24 months (for a total of 36 months), as specified in the State plan.

(11) *Disregard of income applicable only to AFDC.*

(i) Effective until the State plan includes the provision in subdivision (ii) (*b*) of this subparagraph, not later than July 1, 1969, if the State chooses to disregard earned income of dependent children under age 18, specify the amount that is to be disregarded, but not more than $50 per month of income which is earned by any such child and not more than a total of $150 per month of earned income of all such dependent children living together in the same home.

(ii) Effective July 1, 1969, provide for the disregard of earned income as shown in subdivisions (*a*) and (*b*) of this paragraph (a)(11)(ii). Prior to July 1, 1969, States may elect to disregard earned income in accordance with the provisions as stated in such subdivision (*a*) or (*b*), or both, or neither: (*a*) all of the earned income of any child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college or university or a course of vocational or technical training designed to fit him for gainful employment and includes a participant in the Job Corps program under the Economic Opportunity Act of 1964. A full-time student must have a school schedule that is equal to a full-time curriculum. A part-time student must have a school schedule that is equal to at least one-half of a full-time curriculum; (*b*) the first $30 of the total of earned income for a month of all other individuals whose needs are included in the family grant, plus one-third of the remainder of their earned income for the month; except that (*1*) the State agency will not disregard earned income for a month of any one of the persons in a family as provided in subdivision (*b*) of this paragraph (a) (11) (ii) if such a person (*i*) terminated his employment or reduced his earned income without good cause within the

period of 30 days preceding such month; or (*ii*) refused without good cause within the period of 30 days preceding such month to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the state or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; and (*2*) the State agency will not disregard earned income for a month of the persons in a family as provided in subdivision (*b*) of this paragraph (a)(11)(ii) if the total income of such persons for such month exceeds their need as determined without application of any provision for disregarding or setting aside of income unless for any one of the four preceding months their needs were met in whole or in part by an AFDC payment.

(iii) If any portion of an AFDC family's income is to be conserved for the future identifiable needs of a child, specify the needs and amount and type of income to be conserved and provide that such amount will be reasonable for the purpose for which it is being conserved.

(iv) Earned income for purposes of this subparagraph (11) includes training incentive payments and work allowances under the the MDTA, payments under the Economic Oportunity Act of 1964, including payments to beneficiaries of assistance under that act, or earnings under title I of the Elementary and Secondary Education Act, but—does not include incentive payments or earnings derived from participation in Institutional and Work Experience Training or Special Work Projects under the Work Incentive Programs established under part C of title IV of the Social Security Act.

(b) *Federal financial participation; General.* (1)

Federal participation will be available in financial assistance payments made on the basis that (after application of policies governing the allowable reserve, disregard or setting aside of income and resources), all income of the needy individual, together with the assistance payment, do not exceed the State's defined standard of assistance, and available resources of the needy individuals do not exceed the limits under the State plan.

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the State-wide standard, and are made in accordance with the State method for determining the amount of the payment.

(3) Federal participation is available in financial assistance payments made on the basis of the need of the individual. This basis may include consideration of needy persons living in the same home with the recipient when such other persons are within the State's policy as essential to his well-being. Persons living in the home who are "essential to the well-being of the recipient," as specified in the State plan, will govern as the basis for Federal participation (see Guides and Recommendations). When the State includes persons living outside the home or persons not in need, Federal participation is not available for that portion of financial assistance payments attributable to such person, and the State's claims must, therefore, identify the amounts of any such nonmatchable payments.

(4) The amount of the payments by the agency to the recipient representing support payments received by the agency is not subject to Federal financial participation. The normal procedure followed under these cir-

cumstances is to pay the gross needs amount and claim this amount for Federal financial participation and then handle the support payment as a refund and adjust the Federal share on this basis.

(c) *Federal financial participation in vendor payments for home repairs.* With respect to expenditures made after December 31, 1967, expenditures to a maximum of $500 are subject to Federal financial participation at 50 percent for repairing the home owned by an individual who is receiving aid or assistance (other than Medical Assistance for the Aged) under a State plan for OAA, AFDC, AB, APTD, or AABD if:

(1) Prior to making the expenditures the agency determined that: (i) the home is so defective that continued occupancy is unwarranted; (ii) unless repairs are made the recipient would need to move to rental quarters; and (iii) the rental cost of quarters for the recipient (including the spouse living with him in such home and any other individual whose needs were considered in determining the recipient's need) would exceed (over a period of two years) the repair costs needed to make such home habitable together with other costs attributable to continued occupancy of such home.

(2) No expenditures for repair of such home were made previously pursuant to a determination as described in subparagraph (1) of this paragraph. This does not preclude more than one payment made at the time repairs are made pursuant to the determination, e.g., separate payments to the roofer, the electrician, and the plumber.

(3) Expenditures for home repairs are authorized in

writing by a responsible agency person, records show the eligible person in whose behalf the home repair expenditure was made, and there is sufficient evidence that the home repair was performed. (Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

Effective Date: The regulation in this action shall be effective on the date of their publication in the *Federal Register*.

Dated: January 15, 1969.

/s/ JOSEPH H. MEYERS,
Acting Administrator, Social and Rehabilitation Service

Approved: January 18, 1969

/s/ WILBUR J. COHEN,
Secretary

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2449

ASCENSION VIALPANDO, et al.,

Plaintiffs

vs.

CON F. SHEA, et al.,

Defendants

ANSWER

[Filed December 31, 1970]

COMES NOW defendant, Melvin E. Pobanz individually and as Director of the El Paso County Department of Public Welfare, in the within entitled matter by Ernest O. Tullis, attorney for said defendant, and respectfully states to the Court that the issues in the within entitled matter between the Plaintiffs and this Defendant are the same as those framed between the Plaintiffs and the other Defendants in this matter and that therefore it is unnecessary to separately answer each individual allegations as it is made in the complaint and that therefore the said Melvin E. Pobanz as aforesaid does enter his appearance herein and incorporates herein the answer of CON F. SHEA herein filed as it is the same here set forth in full in this answer.

ERNEST O. TULLIS,
Attorney for the Defendant
Melvin E. Pobanz as aforesaid
Exchange National Bank Bldg.
Colorado Springs, Colorado
473-4777

MEMORANDUM

TO:

Douglas D. Doane, Director
Legal Division
John H. Jones, Director
Program Planning

FROM:

Ray M. Freeman, Director
Research and Statistics

DATE:

October 6, 1971

SUBJECT:

Analysis of Earnings Expense Allowances

This is in response to our meeting on October 6, 1971 concerning data on average allowances for earnings expenses in the AFDC: Aid to Families with Dependent Children Program.

This analysis includes composite data for our three sub-programs of ADC: Aid to Dependent Children; ADC-U: Aid to Dependent Children-Unemployed Parent: and WIN: Work Incentive Program; which together comprise Colorado's AFDC: Aid to the Families with Dependent Children Program.

The earnings expenses allowances include the following items, which are so identified in the State's RS 700 reporting system: (1) General; (2) Transportation; (3) Union Dues; (4) Uniforms, Tools; (5) Telephone. It excludes costs incurred for Child Care.

The data is taken from a 100 percent sampling of the State's AFDC caseload for the last month of each calendar quarter from March 1969 through March 1970. The data for the analysis is selected from RS 700 data

bank. The RS 700 reporting form is prepared by county staff on every case whenever an action or an updating action is performed. The county submits the RS 700 form to the State's computer system which introduces the data into the data bank on a daily basis. The cited data for this analysis is taken from computer tabulations which are provided as of the last working day of the month. As stated before, this comprises 100 percent of the caseload.

The analysis indicates:

Selected Month[1]	Total Cases	Total Expenditures	Average per Case
March 1969	822	$26,664	$32.44
June 1969	1,429	43,660	30.55
September 1969	1,611	53,790	33.39
December 1969	1,943	70,147	36.10
March 1970	2,047	75,604	36 93
April 1970	2,195	81,089	36.94
May 1970	2,230	81,688	36.63

[1] All data is as of last working day of month except the May 1970 data is as of the 22nd.

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC

MONTH OF MARCH 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
NOTA	01	19	2,934.57	154.55
ELEM/SEC EDUCATION	02	10	1,523.05	152.30
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	654	100,511.01	153.68
OTHER EMPLOYMENT	05	110	18,005.07	163.68
TOTAL EARNINGS	E1	799	125,926.39	157.60
ALLOWABLE EARN EXPENSE				
GENERAL	10	817	13,015.84	15.93
TRANSPORTATION	11	607	13,196.74	21.74
CHILD CARE	12	221	11,632.94	52.63
UNION DUES	13	32	763.84	23.87
UNIFORM TOOLS	14	82	856.98	10.45
TELEPHONE	15	40	892.64	22.31
TOTAL ALLOW EXPENSE	E2	787	37,781.82	47.67
EARNING MINUS EXPENSE	E3	774	88,691.78	114.57
$30.00 AND 1/3	E4	744	44,774.60	60.11
NET EARNINGS	E5	698	47,592.98	68.18
MISCELLANEOUS INCOME				
OASDI	51	535	45,070.95	84.24
RR BENEFIT	52	9	681.48	75.72
VETERAN BENEFITS	53	129	9,388.63	72.78
UNEMPLOY. COMP.	54	5	838.48	167.69
WORKMANS COMP.	55	25	3,468.62	138.74
SHELTER UTILITY P330	56	469	19,160.29	40.85
CHILD SUPP-CT ORDER	57	126	8,614.12	68.36
CHILD SUPP-VOLUNTARY	58	155	9,802.13	63.23
RETIRE./PENSIONS	59	11	1,456.02	132.36
CASH CONTRIBUTIONS	60	27	1,067.30	39.52
SPOUSE'S INCOME	61	7	255.02	36.43
PROTECTIVE PMTS	62	4	328.00	82.00
OTHER	63	220	11,281.56	51.27
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	F6	1552	107,408.90	69.20
NET EARN + MISC INC	E7	2173	154,833.01	71.25

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	9816	980,368.60	99.87
SHELTER	21	9388	466,941.75	49.73
UTILITIES	22	7621	100,626.83	13.20
PRVC. TUITION	23	48	3,448.84	71.85
TRANSPORTATION	24	120	1,948.26	16.23
CHILD CARE	25	408	20,156.82	49.40
TELEPHONE	26	7	105.98	15.14
UNIFORM TOOLS	27	11	216.71	19.70
MEDICAL NEEDS	28	4	95.00	23.75
SPECIAL DIETS	29	3	24.00	8.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	11	816.12	74.19
RESTAURANT MEALS	34	2	26.00	13.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	1	4.59	4.59
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	4	198.00	49.50
OTHER	40	210	7,063.51	33.63
TOTAL REQUIREMENTS	R1	9717	1,586,528.79	160.18
TOTAL NEED LESS INC	R2	9324	1,348,518.10	144.62
MONEY PAYMENT NEAR $	P1	13944	1,988,959.06	142.63

TOTAL CASES WITH ZERO PAY 113

ADULTS 11931

CHILDREN 39074

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC-U

MONTH OF MARCH 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	01	1	130.00	130.00
FLEW/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	17	2,053.23	120.77
OTHER EMPLOYMENT	05	4	418.41	104.60
TOTAL EARNINGS	E1	20	2,441.64	122.08
ALLOWABLE EARN EXPENSE				
GENERAL	10	15	220.00	14.66
TRANSPORTATION	11	12	235.27	19.60
CHILD CARE	12	2	120.00	60.00
UNION DUES	13	1	25.00	25.00
UNIFORM TOOLS	14	0	.00	.00
TELEPHONE	15	0	.00	.00
TOTAL ALLOW EXPENSE	E2	18	526.67	29.25
EARNING MINUS EXPENSE	E3	18	1,790.07	99.44
$30.00 AND 1/3	E4	17	968.45	56.96
NET EARNINGS	E5	17	941.89	55.40
MISCELLANEOUS INCOME				
OASDI	51	8	1,017.60	127.20
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	3	196.00	65.33
UNEMPLOY. COMP.	54	1	27.00	27.00
WORKMANS COMP.	55	1	25.00	25.00
SHELTER UTILITY FOOD	56	6	307.00	51.16
CHILD SUPP-CT ORDER	57	0	.00	.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	1	23.00	23.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	2	56.67	28.33
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	16	1,485.50	92.84
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	34	3,076.27	90.47
NET EARN + MISC INC	E7	46	3,262.49	70.92

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	347	51,526.00	148.48
SHELTER	21	326	16,185.97	49.65
UTILITIES	22	283	5,075.16	17.93
EDUC. TUITION	23	2	50.00	25.00
TRANSPORTATION	24	48	797.78	16.62
CHILD CARE	25	7	413.48	59.06
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	3	75.00	25.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	0	.00	.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	111	3,071.70	27.67
TOTAL REQUIREMENTS	R1	344	75,498.85	219.47
TOTAL NEED LESS INC	R2	321	68,895.03	214.62
MONEY PAYMENT NEAR $	P1	526	112,754.50	214.36

TOTAL CASES WITH ZERO PAY 12

ADULTS 939

CHILDREN 1920

41B

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY WIN

MONTH OF MARCH 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
NONE	01	0	.00	.00
ELEM/SEC EDUCATION	02	1	175.48	175.48
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	10	2,329.62	232.96
OTHER EMPLOYMENT	05	11	2,049.57	185.41
TOTAL EARNINGS	E1	22	4,441.18	201.87
ALLOWABLE FARN EXPENSE				
GENERAL	10	21	508.21	24.20
TRANSPORTATION	11	18	257.76	14.32
CHILD CARE	12	6	299.00	49.83
UNION DUES	13	1	26.66	26.66
UNIFORM TOOLS	14	0	.00	.00
TELEPHONE	15	0	.00	.00
TOTAL ALLOW EXPENSE	E2	22	900.96	40.95
EARNING MINUS EXPENSE	E3	22	3,540.22	160.91
$30.00 AND 1/3	E4	21	1,743.95	83.04
NET EARNINGS	E5	22	1,796.07	81.63
MISCELLANEOUS INCOME				
OASDI	51	2	260.10	130.05
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	3	88.43	29.47
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	1	52.00	52.00
SHELTER UTILITY FOOD	56	3	170.00	56.66
CHILD SUPP-CT. ORDER	57	1	43.33	43.33
CHILD SUPP-VOLUNTARY	58	3	232.33	77.44
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	1	31.50	31.50
OTHER	63	74	3,641.05	49.20
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	81	4,291.21	52.97
NET EARN + MISC INC	E7	93	5,731.06	61.62

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	270	32,582.00	120.67
SHELTER	21	267	15,061.11	56.40
UTILITIES	22	176	2,580.00	14.65
EDUC. TUITION	23	2	25.00	12.50
TRANSPORTATION	24	217	3,221.69	14.84
CHILD CARE	25	99	4,871.84	49.21
TELEPHONE	26	1	5.94	5.94
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	0	.00	.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	1	15.00	15.00
TOTAL REQUIREMENTS	R1	265	56,579.28	213.50
TOTAL NEED LESS INC	R2	255	49,784.34	195.23
MONEY PAYMENT NEAR $	P1	402	79,997.00	198.99

TOTAL CASES WITH ZERO PAY		5
ADULTS		610
CHILDREN		1283

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL — PROGRAM ESETA1

CATEGORY AOC — MONTH OF JUNE 1969 — RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
NOTA	01	33	4,907.84	148.72
ELEM/SEC EDUCATION	02	16	1,954.94	122.18
WIN PROGRAM	03	1	143.10	143.10
PRIVATE EMPLOYMENT	04	1084	170,999.18	157.74
OTHER EMPLOYMENT	05	225	36,092.97	160.41
TOTAL EARNINGS	E1	1365	217,185.37	159.11
ALLOWABLE EARN EXPENSE				
GENERAL	10	1405	22,625.10	16.10
TRANSPORTATION	11	1037	21,841.52	21.10
CHILD CARE	12	218	10,319.79	47.33
UNION DUES	13	51	944.43	18.51
UNIFORM TOOLS	14	163	2,016.64	12.37
TELEPHONE	15	78	1,409.90	18.07
TOTAL ALLOW EXPENSE	E2	1355	52,360.31	38.64
EARNING MINUS EXPENSE	E3	1352	164,663.96	121.64
$30.00 AND 1/3	E4	1295	84,269.99	65.07
NET EARNINGS	E5	1175	85,483.86	72.75
MISCELLANEOUS INCOME				
OASDI	51	745	59,606.63	80.00
RR BENEFIT	52	11	862.48	78.40
VETERAN BENEFITS	53	173	17,603.60	72.85
UNEMPLOY. COMP.	54	3	375.20	125.06
WORKMANS COMP.	55	42	5,862.75	139.58
SHELTER UTILITY FOOD	56	638	25,522.60	40.00
CHILD SUPP-CT ORDER	57	184	13,214.70	71.81
CHILD SUPP-VOLUNTARY	58	239	14,331.46	59.96
RETIRE./PENSIONS	59	18	2,038.09	113.22
CASH CONTRIBUTIONS	60	44	2,095.25	47.61
SPOUSE'S INCOME	61	15	919.39	61.29
PROTECTIVE PMTS	62	8	565.98	70.74
OTHER	63	336	13,770.72	40.98
V.A.AID AND ATTENDANCE	64	2	124.97	62.48
TOTAL MISC. INCOME	E6	2194	144,968.07	66.07
NET EARN + MISC INC	E7	3243	231,421.12	71.36

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	12733	1,278,014.59	100.37
SHELTER	21	12215	600,435.77	49.15
UTILITIES	22	10168	133,837.83	13.16
EDUC. TUITION	23	52	2,215.73	42.61
TRANSPORTATION	24	129	2,271.46	17.60
CHILD CARE	25	896	48,145.48	53.73
TELEPHONE	26	8	80.68	10.08
UNIFORM TOOLS	27	11	260.18	23.65
MEDICAL NEEDS	28	3	87.00	29.00
SPECIAL DIETS	29	3	24.00	8.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	8	546.67	68.33
RESTAURANT MEALS	34	1	18.00	18.00
HOME CARE	35	1	108.33	108.33
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	3	15.59	5.19
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	4	204.23	51.05
OTHER	40	514	17,571.76	34.18
TOTAL REQUIREMENTS	R1	12644	2,045,491.10	161.77
TOTAL NEED LESS INC	R2	12162	1,758,043.64	144.55
MONEY PAYMENT NEAR $	P1	14105	2,000,450.30	141.82

TOTAL CASES WITH ZERO PAY	191
ADULTS	12127
CHILDREN	39305

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC-U

MONTH OF JUNE 1969

PROGRAM ESFTR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	0	.00	.00
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	18	1,713.05	95.14
OTHER EMPLOYMENT	05	2	127.68	63.84
TOTAL EARNINGS	E1	19	1,808.73	95.19
ALLOWABLE EARN EXPENSE				
GENERAL	10	18	270.00	15.00
TRANSPORTATION	11	8	183.01	22.87
CHILD CARE	12	1	22.00	22.00
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	0	.00	.00
TELEPHONE	15	0	.00	.00
TOTAL ALLOW EXPENSE	E2	18	460.01	25.55
EARNING MINUS EXPENSE	E3	19	1,381.43	72.70
$30.00 AND 1/3	E4	18	749.76	41.65
NET EARNINGS	E5	13	684.92	52.68
MISCELLANEOUS INCOME				
OASDI	51	10	927.20	92.72
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	4	239.40	59.87
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	1	172.32	172.32
SHELTER UTILITY P000	56	8	340.58	42.57
CHILD SUPP-CT ORDER	57	0	.00	.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	1	115.00	115.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	1	3.34	3.34
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	15	909.41	60.56
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	38	2,692.51	70.85
NET EARN + MISC INC	E7	49	3,142.43	64.13

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	276	41,502.00	150.36
SHELTER	21	271	13,754.27	50.75
UTILITIES	22	223	4,090.00	18.34
EDUC. TUITION	23	2	50.00	25.00
TRANSPORTATION	24	44	647.99	14.72
CHILD CARE	25	6	427.00	71.16
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	2	50.00	25.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	0	.00	.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	70	2,086.22	29.80
TOTAL REQUIREMENTS	R1	273	61,241.64	224.32
TOTAL NEED LESS INC	R2	266	56,917.55	213.97
MONEY PAYMENT NEAR $	P1	335	71,191.50	212.51

TOTAL CASES WITH ZERO PAY	23
ADULTS	604
CHILDREN	1323

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL — PROGRAM FSPTR1

CATEGORY 4IN — MONTH OF JUNE 1969 — RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	10	1,491.00	145.10
ELEM/SEC EDUCATION	02	2	235.25	117.62
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	26	5,037.42	193.76
OTHER EMPLOYMENT	05	14	1,913.19	136.65
TOTAL EARNINGS	E1	54	8,783.01	162.64
ALLOWABLE EARN EXPENSE				
GENERAL	10	58	983.99	16.96
TRANSPORTATION	11	48	641.72	13.36
CHILD CARE	12	10	414.00	41.40
UNION DUES	13	4	98.66	24.66
UNIFORM TOOLS	14	4	30.00	7.50
TELEPHONE	15	4	37.00	9.30
TOTAL ALLOW EXPENSE	E2	56	1,823.94	32.57
EARNING MINUS EXPENSE	E3	56	7,269.04	129.80
$30.00 AND 1/3	E4	54	3,714.94	68.79
NET EARNINGS	E5	54	3,861.58	71.51
MISCELLANEOUS INCOME				
OASDI	51	5	654.50	130.90
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	5	222.43	44.48
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	12	566.26	47.18
CHILD SUPP-CT ORDER	57	1	50.00	50.00
CHILD SUPP-VOLUNTARY	58	6	296.33	49.39
RETIRE./PENSIONS	59	2	153.60	76.80
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PAYS	62	1	161.00	161.00
OTHER	63	68	3,074.17	45.20
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	88	4,680.60	53.18
NET EARN + MISC INC	E7	135	4,173.08	62.54

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	556	68,034.00	122.36
SHELTER	21	552	31,676.14	57.38
UTILITIES	22	403	5,950.00	14.76
EDUC. TUITION	23	4	50.00	12.50
TRANSPORTATION	24	472	6,833.75	14.47
CHILD CARE	25	236	12,605.88	53.41
TELEPHONE	26	2	46.25	23.12
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS.	28	0	.00	.00
SPECIAL DIETS	29	0	.00	.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.M. PERSONAL	39	1	162.00	162.00
OTHER	40	3	45.00	15.00
TOTAL REQUIREMENTS	R1	538	118,967.31	221.12
TOTAL NEED LESS INC	R2	527	110,259.26	209.22
MONEY PAYMENT NEAR $	P1	608	119,731.00	195.28

TOTAL CASES WITH ZERO PAY	31	
ADULTS	905	
CHILDREN	1994	

41F

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC

MONTH OF SEPT. 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	01	30	4,266.53	142.21
ELEM/SEC EDUCATION	02	11	1,166.13	89.70
WIN PROGRAM	03	2	284.56	142.28
PRIVATE EMPLOYMENT	04	1296	227,665.43	177.03
OTHER EMPLOYMENT	05	269	45,551.70	169.26
TOTAL EARNINGS	F1	1571	266,591.21	169.68
ALLOWABLE EARN EXPENSE				
GENERAL	10	1567	25,486.69	16.61
TRANSPORTATION	11	1206	25,855.98	21.47
CHILD CARE	12	277	9,520.16	34.36
UNION DUES	13	63	1,077.09	17.09
UNIFORM TOOLS	14	200	2,159.71	10.79
TELEPHONE	15	89	1,280.76	14.39
TOTAL ALLOW EXPENSE	F2	1529	60,946.70	39.86
EARNING MINUS EXPENSE	E3	1493	198,942.50	133.25
$30.00 AND 1/3	F4	1467	119,484.85	81.48
NET EARNINGS	E5	1269	89,872.88	70.82
MISCELLANEOUS INCOME				
OASDI	51	876	71,722.56	81.87
RR BENEFIT	52	14	1,266.28	90.44
VETERAN BENEFITS	53	195	14,081.64	72.21
UNEMPLOY. COMP.	54	9	1,095.88	121.98
WORKMANS COMP.	55	45	6,996.06	155.42
SHELTER UTILITY FOOD	56	766	30,801.27	41.28
CHILD SUPP-CT ORDER	57	207	15,675.06	75.72
CHILD SUPP-VOLUNTARY	58	276	17,567.96	63.65
RETIRE./PENSIONS	59	16	1,613.44	115.24
CASH CONTRIBUTIONS	60	36	1,679.89	46.66
SPOUSE'S INCOME	61	15	1,059.56	70.63
PROTECTIVE PMTS	62	5	402.98	80.59
OTHER	63	359	15,135.78	42.16
V.A.AID AND ATTENDANCE	64	2	85.00	42.50
TOTAL MISC. INCOME	E6	2534	170,966.56	67.46
NET EARN + MISC INC	E7	3697	261,097.62	71.16

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	15188	1,496,322.77	98.38
SHELTER	21	14195	697,108.19	49.10
UTILITIES	22	11618	152,429.80	13.12
EDUC. TUITION	23	59	2,647.91	44.87
TRANSPORTATION	24	119	2,039.48	17.13
CHILD CARE	25	1049	61,410.84	58.54
TELEPHONE	26	8	44.06	5.50
UNIFORM TOOLS	27	7	124.00	17.71
MEDICAL NEEDS	28	7	147.41	21.05
SPECIAL DIETS	29	185	760.00	4.10
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	5	371.00	74.20
RESTAURANT MEALS	34	1	18.00	18.00
MINF CARE	35	1	108.33	108.33
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	6	91.59	15.26
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	6	112.23	18.70
OTHER	40	586	16,998.78	29.00
TOTAL REQUIREMENTS	R1	15188	2,400,426.79	158.04
TOTAL NEED LESS INC	R2	14904	2,111,662.71	141.68
MONEY PAYMENT NEAR $	P1	15480	2,207,050.15	142.57
TOTAL CASES WITH ZERO PAY		96		
ADULTS		13233		
CHILDREN		42073		

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

PROGRAM ESETR1

CATEGORY AOC-U

MONTH OF SEPT. 1969

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	01	0	.00	.00
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	10	1,605.28	160.52
OTHER EMPLOYMENT	05	3	290.68	96.89
TOTAL EARNINGS	E1	13	1,963.01	141.77
ALLOWABLE EARN EXPENSE				
GENERAL	10	10	150.00	15.00
TRANSPORTATION	11	8	168.32	21.04
CHILD CARE	12	3	41.19	13.71
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	2	7.50	3.75
TELEPHONE	15	0	.00	.00
TOTAL ALLOW EXPENSE	E2	12	351.97	29.33
EARNING MINUS EXPENSE	E3	13	1,519.06	116.85
$30.00 AND 1/3	E4	13	942.32	72.48
NET EARNINGS	E5	10	648.54	64.85
MISCELLANEOUS INCOME				
OASDI	51	9	764.30	84.92
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	5	337.68	67.13
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	5	256.58	51.31
CHILD SUPP-CT ORDER	57	0	.00	.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	12	715.24	59.60
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	30	1,986.80	66.22
NET EARN + MISC INC	E7	40	2,540.53	63.51

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	292	40,756.00	139.57
SHELTER	21	271	14,070.55	51.92
UTILITIES	22	216	3,920.00	18.14
FOOD, TUITION	23	5	122.00	24.40
TRANSPORTATION	24	33	481.00	14.57
CHILD CARE	25	4	306.64	76.66
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	1	4.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.M. PERSONAL	39	0	.00	.00
OTHER	40	57	1,441.00	25.28
TOTAL REQUIREMENTS	R1	291	60,561.69	208.11
TOTAL NEED LESS INC	R2	287	57,608.17	200.72
MONEY PAYMENT NEAR $	P1	314	66,171.00	209.40

TOTAL CASES WITH ZERO PAY 18

ADULTS 577

CHILDREN 1136

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY WIN

MONTH OF SEPT. 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
NOTA	01	10	1,657.00	165.70
FLEN/SEC EDICATION	02	0	.00	.00
WIN PROGRAM	03	1	341.40	341.40
PRIVATE EMPLOYMENT	04	43	8,687.27	202.02
OTHER EMPLOYMENT	05	18	3,003.29	166.84
TOTAL EARNINGS	F1	70	12,927.68	184.68
ALLOWABLE EARN EXPENSE				
GENERAL	10	72	1,193.98	16.58
TRANSPORTATION	11	57	819.28	14.37
CHILD CARE	12	7	302.38	43.19
UNION DUES	13	2	38.66	19.33
UNIFORM TOOLS	14	9	103.50	11.50
TELEPHONE	15	3	27.00	9.00
TOTAL ALLOW EXPENSE	F2	70	2,355.30	33.64
EARNING MINUS EXPENSE	F3	72	10,823.64	150.32
$30.00 AND 1/3	F4	67	5,751.72	85.84
NET EARNINGS	F5	64	5,001.88	78.15
MISCELLANEOUS INCOME				
OASDI	51	5	500.10	100.02
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	5	274.75	54.95
UNEMPLOY. COMP.	54	1	103.70	103.70
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	13	685.60	52.73
CHILD SUPP-CT ORDER	57	1	35.00	35.00
CHILD SUPP-VOLUNTARY	58	4	134.33	34.08
RETIRE./PENSIONS	59	1	130.40	130.40
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	25	1,016.91	40.67
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	F6	50	2,624.56	52.49
NET EARN + MISC INC	F7	120	8,274.97	68.54

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	657	82,014.00	124.83
SHELTER	21	629	36,710.75	97.56
UTILITIES	22	448	6,659.00	15.20
EDUC. TUITION	23	5	62.00	12.40
TRANSPORTATION	24	529	7,606.08	14.37
CHILD CARE	25	255	18,568.41	72.81
TELEPHONE	26	3	118.25	39.41
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	0	.00	.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	7	663.03	94.71
TOTAL REQUIREMENTS	P1	556	148,569.04	276.47
TOTAL NEED LESS INC	R2	655	140,633.78	214.70
MONEY PAYMENT NEAR $	P1	657	132,274.00	201.33

TOTAL CASES WITH ZERO PAY 8

ADULTS 926

CHILDREN 2097

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC

MONTH OF DECEMBER 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
ADTA	01	43	6,537.57	152.03
ELEM/SEC EDUCATION	02	19	2,898.16	152.53
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	1535	277,663.15	180.88
OTHER EMPLOYMENT	05	319	54,481.34	170.78
TOTAL EARNINGS	E1	1868	316,598.28	169.48
ALLOWABLE EARN EXPENSE				
GENERAL	10	1873	31,660.05	16.90
TRANSPORTATION	11	1446	33,569.11	23.21
CHILD CARE	12	379	11,679.86	30.81
UNION DUES	13	92	1,449.38	15.75
UNIFORM TOOLS	14	239	2,309.18	9.66
TELEPHONE	15	81	1,095.70	13.40
TOTAL ALLOW EXPENSE	E2	1846	78,689.04	42.62
EARNING MENUS EXPENSE	E3	1787	234,998.75	131.50
$30.00 AND 1/3	E4	1703	143,852.23	84.46
NET EARNINGS	E5	1485	102,414.31	67.75
MISCELLANEOUS INCOME				
OASDI	51	975	81,389.34	83.47
RR BENEFIT	52	12	993.19	82.76
VETERAN BENEFITS	53	195	13,708.32	70.29
UNEMPLOY. COMP.	54	5	584.58	116.91
WORKMANS COMP.	55	35	5,011.21	143.17
SHELTER UTILITY FOOD	56	714	29,761.92	41.68
CHILD SUPP-CT ORDER	57	230	17,371.87	75.52
CHILD SUPP-VOLUNTARY	58	291	18,382.36	63.16
RETIRE./PENSIONS	59	12	1,636.22	136.35
CASH CONTRIBUTIONS	60	39	1,866.32	47.85
SPOUSE'S INCOME	61	17	1,144.84	67.34
PROTECTIVE PMTS	62	4	354.00	88.50
OTHER	63	296	14,630.39	49.42
V.A.AID AND ATTENDANCE	64	4	329.17	82.29
TOTAL MISC. INCOME	E6	2572	180,878.43	70.32
NET EARN + MISC INC	E7	1939	284,161.50	72.14

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	16484	1,618,098.63	98.16
SHELTER	21	15538	765,401.39	49.25
UTILITIES	22	12730	166,135.60	13.05
EDUC. TUITION	23	53	2,659.69	50.18
TRANSPORTATION	24	101	1,645.82	16.29
CHILD CARE	25	1308	76,131.35	58.20
TELEPHONE	26	12	143.82	11.98
UNIFORM TOOLS	27	5	69.00	13.80
MEDICAL NEEDS	28	11	181.05	16.45
SPECIAL GIFTS	29	450	1,917.62	4.26
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	11	667.02	60.63
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	2	208.33	104.16
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	5	26.59	5.31
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	7	56.11	8.01
OTHER	40	551	12,774.20	23.19
TOTAL REQUIREMENTS	R1	16489	2,627,080.48	159.32
TOTAL NEED LESS INC	R2	16211	2,314,448.21	142.77
MONEY PAYMENT NEAR $	P1	16702	2,365,815.49	141.64

TOTAL CASES WITH ZERO PAY	104	
ADULTS	14500	
CHILDREN	44663	

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC-U

MONTH OF DECEMBER 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	1	364.00	364.00
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	11	1,523.94	138.54
OTHER EMPLOYMENT	05	5	650.12	130.02
TOTAL EARNINGS	E1	18	2,936.30	129.79
ALLOWABLE EARN EXPENSE				
GENERAL	10	16	240.00	15.00
TRANSPORTATION	11	13	179.98	13.84
CHILD CARE	12	3	16.29	5.43
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	3	13.50	4.50
TELEPHONE	15	0	.00	.00
TOTAL ALLOW EXPENSE	E2	17	434.77	25.57
EARNING MINUS EXPENSE	E3	17	1,894.03	111.41
$30.00 AND 1/3	E4	15	1,046.00	69.73
NET EARNINGS	E5	12	792.09	66.00
MISCELLANEOUS INCOME				
OASDI	51	10	982.90	89.29
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	5	310.68	62.13
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	10	466.58	46.65
CHILD SUPP-CT ORDER	57	0	.00	.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	1	35.00	35.00
SPOUSE'S INCOME	61	1	91.00	91.00
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	5	543.07	108.61
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	33	2,395.17	72.58
NET EARN + MISC INC	E7	46	3,363.66	73.12

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	424	59,938.00	141.36
SHELTER	21	391	20,264.94	51.82
UTILITIES	22	308	5,455.00	17.71
EDUC. TUITION	23	5	122.00	24.40
TRANSPORTATION	24	23	350.50	15.24
CHILD CARE	25	1	86.00	86.00
TELEPHONE	26	1	3.40	3.40
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	12	48.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	1	4.00	4.00
OTHER	40	28	457.00	16.32
TOTAL REQUIREMENTS	R1	423	86,123.52	203.60
TOTAL NEED LESS INC	R2	408	79,842.35	195.69
MONEY PAYMENT NEAR $	P1	441	89,634.00	203.25

TOTAL CASES WITH ZERO PAY 13

ADULTS 835

CHILDREN 1506

~~1341~~ 1341

41K

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY WIN

MONTH OF DECEMBER 1969

PROGRAM ESETR1

RUN DATE 7-23-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	C1	14	2,871.61	205.11
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	59	11,668.23	197.42
OTHER EMPLOYMENT	05	20	3,614.09	180.70
TOTAL EARNINGS	F1	81	15,509.29	191.47
ALLOWABLE EARN EXPENSE				
GENERAL	10	81	1,324.98	16.40
TRANSPORTATION	11	68	1,280.95	18.83
CHILD CARE	12	9	311.40	34.60
UNION DUES	13	4	50.66	12.66
UNIFORM TOOLS	14	10	108.00	10.80
TELEPHONE	15	5	35.76	7.15
TOTAL ALLOW EXPENSE	F2	80	3,029.77	37.87
EARNING MINUS EXPENSE	E3	93	12,806.83	156.29
$30.00 AND 1/3	E4	81	7,438.14	91.82
NET EARNINGS	E5	77	5,442.16	70.67
MISCELLANEOUS INCOME				
OASDI	51	5	274.00	54.80
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	4	183.55	45.88
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	14	749.10	53.47
CHILD SUPP-CT ORDER	57	6	644.60	107.43
CHILD SUPP-VOLUNTARY	58	11	966.33	87.84
RETIRE./PENSIONS	59	1	130.60	130.60
CASH CONTRIBUTIONS	60	1	20.00	20.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	3	649.00	216.33
OTHER	63	19	721.49	37.97
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	F6	57	3,965.57	69.57
NET EARN + MISC INC	E7	139	10,262.96	73.83

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	682	83,182.00	121.96
SHELTER	21	667	38,090.79	57.10
UTILITIES	22	486	7,165.00	14.74
FDUC. TUITION	23	8	97.00	12.12
TRANSPORTATION	24	523	7,586.50	14.50
CHILD CARE	25	295	19,764.66	66.99
TELEPHONE	26	2	86.25	43.12
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	4	16.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	13	830.36	63.87
TOTAL REQUIREMENTS	R1	681	153,334.26	225.16
TOTAL NEED LESS INC	R2	678	144,008.53	212.40
MONEY PAYMENT NEAR $	P1	681	131,572.00	193.20

TOTAL CASES WITH ZERO PAY 11

ADULTS 923

CHILDREN 2117

3040

411

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC

MONTH OF MARCH 1970

PROGRAM ESETR1

RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
NOTA	01	46	8,092.10	175.91
ELEM/SEC EDUCATION	02	16	2,458.54	153.65
WIN PROGRAM	03	5	1,143.55	228.71
PRIVATE EMPLOYMENT	04	1552	287,988.42	185.55
OTHER EMPLOYMENT	05	337	57,851.08	171.66
TOTAL EARNINGS	E1	1909	332,640.71	174.24
ALLOWABLE EARN EXPENSE				
GENERAL	10	1900	31,762.38	16.71
TRANSPORTATION	11	1489	36,613.11	24.58
CHILD CARE	12	355	11,461.57	32.28
UNION DUES	13	86	1,209.90	14.06
UNIFORM TOOLS	14	258	2,259.09	8.75
TELEPHONE	15	73	987.81	13.53
TOTAL ALLOW EXPENSE	E2	1875	80,665.66	43.02
EARNING MINUS EXPENSE	E3	1829	248,492.39	135.86
$30.00 AND 1/3	E4	1739	152,422.70	87.64
NET EARNINGS	E5	1504	105,464.09	70.12
MISCELLANEOUS INCOME				
OASDI	51	939	81,077.39	86.34
RR BENEFIT	52	9	757.98	84.22
VETERAN BENEFITS	53	186	12,817.14	68.90
UNEMPLOY. COMP.	54	5	829.75	165.95
WORKMANS COMP.	55	23	3,158.83	137.34
SHELTER UTILITY FOOD	56	637	25,330.72	39.76
CHILD SUPP-CT ORDER	57	219	16,196.48	73.95
CHILD SUPP-VOLUNTARY	58	303	19,162.00	63.24
RETIRE./PENSIONS	59	11	1,460.70	132.79
CASH CONTRIBUTIONS	60	33	1,643.34	49.79
SPOUSE'S INCOME	61	19	1,394.53	73.39
PROTECTIVE PMTS	62	5	434.00	86.80
OTHER	63	262	14,397.34	54.95
V.A.AID AND ATTENDANCE	64	7	432.95	61.85
TOTAL MISC. INCOME	E6	2437	174,353.89	71.54
NET EARN + MISC INC	E7	3829	282,802.52	73.85

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAG PER CASE
STD ALLOW FOOD CL PN	20	16761	1,640,788.47	97.89
SHELTER	21	15870	786,374.26	49.55
UTILITIES	22	12981	168,244.56	12.96
EDUC. TUITION	23	42	2,142.44	51.01
TRANSPORTATION	24	101	1,578.10	15.62
CHILD CARE	25	1329	77,965.29	58.66
TELEPHONE	26	13	180.18	13.86
UNIFORM TOOLS	27	3	54.00	18.00
MEDICAL NEEDS	28	14	187.65	13.40
SPECIAL DIETS	29	629	2,644.62	4.20
GUIDE DOG	30	1	4.00	4.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	6	419.25	69.87
RESTAURANT MEALS	34	1	4.00	4.00
HOME CARE	35	1	108.33	108.33
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	3	15.59	5.19
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	4	32.11	8.02
OTHER	40	274	6,448.67	23.53
TOTAL REQUIREMENTS	R1	16761	2,671,844.02	159.40
TOTAL NEED LESS INC	R2	16593	2,378,791.12	143.36
MONEY PAYMENT NEAR $	P1	16930	2,395,096.00	141.47

TOTAL CASES WITH ZERO PAY	113
ADULTS	14771
CHILDREN	44941

41M

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC-U

PROGRAM ESETR1

MONTH OF MARCH 1970

RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	5	828.00	165.60
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	21	2,965.28	141.20
OTHER EMPLOYMENT	05	16	1,695.74	105.98
TOTAL EARNINGS	E1	39	5,067.99	129.94
ALLOWABLE EARN EXPENSE				
GENERAL	10	38	589.86	15.52
TRANSPORTATION	11	31	389.38	12.56
CHILD CARE	12	2	61.85	30.92
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	4	28.00	7.00
TELEPHONE	15	2	59.19	29.59
TOTAL ALLOW EXPENSE	E2	37	1,083.28	29.27
EARNING MINUS EXPENSE	E3	39	3,939.66	101.01
$30.00 AND 1/3	E4	38	2,515.49	66.19
NET EARNINGS	E5	29	1,473.36	50.80
MISCELLANEOUS INCOME				
OASDI	51	4	208.40	52.10
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	3	111.00	37.00
UNEMPLOY. COMP.	54	1	59.00	59.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	16	694.25	43.39
CHILD SUPP-CT ORDER	57	1	30.00	30.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	1	250.00	250.00
PROTECTIVE PMTS	62	0	.00	.00
OTHER	63	10	736.34	73.63
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	34	1,995.13	58.68
NET EARN + MISC INC	E7	61	3,486.71	57.15

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	476	63,304.00	132.99
SHELTER	21	465	25,315.39	54.44
UTILITIES	22	367	5,772.00	15.72
EDUC. TUITION	23	0	.00	.00
TRANSPORTATION	24	13	196.00	15.07
CHILD CARE	25	5	318.00	63.60
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	2	8.00	4.00
SPECIAL DIETS	29	32	128.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	1	4.00	4.00
OTHER	40	13	242.00	18.61
TOTAL REQUIREMENTS	R1	475	94,921.39	199.83
TOTAL NEED LESS INC	R2	468	90,252.00	192.84
MONEY PAYMENT NEAR $	P1	490	95,781.00	195.47

TOTAL CASES WITH ZERO PAY	16
ADULTS	955
CHILDREN	1451

41N

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL — PROGRAM ESETR1

CATEGORY WIN — MONTH OF MARCH 1970 — RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	01	27	5,644.36	209.05
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	5	267.00	53.40
PRIVATE EMPLOYMENT	04	101	18,306.33	181.25
OTHER EMPLOYMENT	05	32	5,168.83	161.52
TOTAL EARNINGS	E1	142	23,209.10	163.44
ALLOWABLE EARN EXPENSE				
GENERAL	10	140	2,333.59	16.66
TRANSPORTATION	11	111	3,046.51	27.44
CHILD CARE	12	22	486.78	22.12
UNION DUES	13	5	52.18	10.43
UNIFORM TOOLS	14	17	143.91	8.46
TELEPHONE	15	13	121.23	9.32
TOTAL ALLOW EXPENSE	E2	135	5,866.01	43.45
EARNING MINUS EXPENSE	E3	137	17,835.99	130.18
$30.00 AND 1/3	E4	134	11,195.91	83.55
NET EARNINGS	E5	101	6,893.38	68.25
MISCELLANEOUS INCOME				
OASDI	51	32	3,099.00	96.84
RR BENEFIT	52	1	111.10	111.10
VETERAN BENEFITS	53	10	762.80	76.28
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	23	1,049.10	45.61
CHILD SUPP-CT ORDER	57	18	1,816.10	100.89
CHILD SUPP-VOLUNTARY	58	28	2,301.33	82.19
RETIRE./PENSIONS	59	1	207.00	207.00
CASH CONTRIBUTIONS	60	1	20.00	20.00
SPOUSE'S INCOME	61	1	37.00	37.00
PROTECTIVE PMTS	62	1	305.00	305.00
OTHER	63	18	949.66	52.75
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	120	10,048.29	83.73
NET EARN + MISC INC	E7	220	17,558.04	79.80

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	1304	161,578.50	123.72
SHELTER	21	1278	68,315.13	53.45
UTILITIES	22	1026	15,686.32	15.28
EDUC. TUITION	23	6	397.11	66.18
TRANSPORTATION	24	868	13,099.64	15.09
CHILD CARE	25	463	30,387.05	65.63
TELEPHONE	26	4	110.60	27.65
UNIFORM TOOLS	27	3	47.90	15.96
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	21	84.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	1	6.00	6.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	14	342.33	24.45
TOTAL REQUIREMENTS	R1	1306	287,016.78	219.76
TOTAL NEED LESS INC	R2	1304	270,013.94	207.06
MONEY PAYMENT NEAR $	P1	1307	244,975.00	187.43

TOTAL CASES WITH ZERO PAY	8	
ADULTS	1781	
CHILDREN	3927	

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

PROGRAM ESETR1

CATEGORY ADC

MONTH OF APRIL 1970

RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	49	8,697.15	177.49
ELEM/SEC EDUCATION	02	17	2,403.34	141.37
WIN PROGRAM	03	4	868.93	217.23
PRIVATE EMPLOYMENT	04	1639	305,248.57	186.24
OTHER EMPLOYMENT	05	356	61,428.37	172.55
TOTAL EARNINGS	E1	2026	356,241.21	175.83
ALLOWABLE EARN EXPENSE				
GENERAL	10	2025	33,498.58	16.54
TRANSPORTATION	11	1583	39,583.92	25.00
CHILD CARE	12	355	11,340.97	31.94
UNION DUES	13	94	1,353.15	14.39
UNIFORM TOOLS	14	294	2,407.63	8.18
TELEPHONE	15	73	973.13	13.33
TOTAL ALLOW EXPENSE	E2	2003	85,505.31	42.68
EARNING MINUS EXPENSE	E3	1965	268,385.39	136.58
30.00 AND 1/3	E4	1685	165,765.79	87.93
NET EARNINGS	E5	1612	111,299.39	69.04
MISCELLANEOUS INCOME				
OASDI	51	944	82,716.53	87.62
RR BENEFIT	52	13	1,169.50	89.96
VETERAN BENEFITS	53	185	12,345.66	66.73
UNEMPLOY. COMP.	54	4	728.55	182.13
WORKMANS COMP.	55	21	2,830.58	134.78
SHELTER UTILITY FOOD	56	620	25,165.73	40.58
CHILD SUPP-CT ORDER	57	226	16,302.63	72.13
CHILD SUPP-VOLUNTARY	58	340	21,514.61	63.27
RETIRE./PENSIONS	59	14	1,800.70	128.62
CASH CONTRIBUTIONS	60	36	1,729.34	48.03
SPOUSE'S INCOME	61	17	1,300.77	76.51
PROTECTIVE PMTS	62	5	415.00	83.00
OTHER	63	262	15,003.47	57.26
V.A.AID AND ATTENDANCE	64	5	288.78	57.75
TOTAL MISC. INCOME	E6	2482	179,224.15	72.20
NET EARN + MISC INC	E7	3980	294,680.13	74.04

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	17488	1,702,167.47	97.33
SHELTER	21	16557	820,345.24	49.54
UTILITIES	22	13553	174,982.82	12.91
EDUC. TUITION	23	35	1,332.91	38.08
TRANSPORTATION	24	118	1,857.25	15.73
CHILD CARE	25	1419	84,398.67	59.47
TELEPHONE	26	12	175.18	14.59
UNIFORM TOOLS	27	2	39.55	19.77
MEDICAL NEEDS	28	15	256.65	17.11
SPECIAL DIETS	29	720	2,992.62	4.15
GUIDE DOG	30	1	4.00	4.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	7	490.00	70.00
RESTAURANT MEALS	34	1	4.00	4.00
HOME CARE	35	1	108.33	108.33
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	2	9.59	4.79
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	2	18.11	9.05
OTHER	40	229	5,605.52	24.47
TOTAL REQUIREMENTS	R1	17485	2,779,491.53	158.96
TOTAL NEED LESS INC	R2	17291	2,472,077.20	142.96
MONEY PAYMENT NEAR $	P1	17647	2,483,476.86	140.73

TOTAL CASES WITH ZERO PAY		115
ADULTS		15383
CHILDREN		46410

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC-U

MONTH OF APRIL 1970

PROGRAM ESETR1

RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MDTA	01	3	568.00	189.33
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	21	3,002.85	142.99
OTHER EMPLOYMENT	05	22	2,407.29	109.42
TOTAL EARNINGS	E1	42	5,301.24	126.22
ALLOWABLE EARN EXPENSE				
GENERAL	10	40	634.94	15.87
TRANSPORTATION	11	32	465.47	14.54
CHILD CARE	12	2	20.85	10.42
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	7	79.38	11.34
TELEPHONE	15	1	5.19	5.19
TOTAL ALLOW EXPENSE	E2	41	1,200.64	29.28
EARNING MINUS EXPENSE	E3	42	4,086.12	97.28
$30.00 AND 1/3	E4	41	2,681.70	65.40
NET EARNINGS	E5	31	1,463.88	47.22
MISCELLANEOUS INCOME				
OASDI	51	4	208.40	52.10
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	4	132.00	33.00
UNEMPLOY. COMP.	54	2	173.00	86.50
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	13	620.58	47.73
CHILD SUPP-CT ORDER	57	1	30.00	30.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	1	250.00	250.00
PROTECTIVE PMTS	62	3	655.00	218.33
OTHER	63	9	652.36	72.48
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	37	2,800.48	75.68
NET EARN + MISC INC	E7	65	4,224.11	64.98

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	518	70,106.00	135.33
SHELTER	21	504	27,638.89	54.83
UTILITIES	22	416	6,633.00	15.94
EDUC. TUITION	23	0	.00	.00
TRANSPORTATION	24	18	296.65	16.48
CHILD CARE	25	3	144.00	48.00
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	39	156.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	1	4.00	4.00
OTHER	40	8	222.00	27.75
TOTAL REQUIREMENTS	R1	517	104,752.54	202.61
TOTAL NEED LESS INC	R2	511	100,387.13	196.45
MONEY PAYMENT NEAR $	P1	529	104,882.00	198.26

TOTAL CASES WITH ZERO PAY	17	
ADULTS	1033	
CHILDREN	1586	

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

PROGRAM ESETRI

COUNTY ALL

CATEGORY WIN

MONTH OF APRIL 1970

RUN DATE 4-27-71

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	22	4,546.15	206.64
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	13	983.81	75.67
PRIVATE EMPLOYMENT	04	119	19,372.53	162.79
OTHER EMPLOYMENT	05	27	3,701.07	137.07
TOTAL EARNINGS	E1	163	23,998.68	147.23
ALLOWABLE EARN EXPENSE				
GENERAL	10	155	2,723.19	17.56
TRANSPORTATION	11	120	2,973.79	24.78
CHILD CARE	12	23	623.60	27.11
UNION DUES	13	6	67.63	11.27
UNIFORM TOOLS	14	22	235.10	10.68
TELEPHONE	15	12	167.54	13.96
TOTAL ALLOW EXPENSE	E2	151	6,369.30	42.18
EARNING MINUS EXPENSE	E3	150	17,364.64	115.76
$30.00 AND 1/3	E4	146	11,343.40	77.69
NET EARNINGS	E5	101	6,291.44	62.29
MISCELLANEOUS INCOME				
OASDI	51	37	3,751.90	101.40
RR BENEFIT	52	1	111.10	111.10
VETERAN BENEFITS	53	13	867.45	66.72
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	26	1,193.10	45.88
CHILD SUPP-CT ORDER	57	22	2,035.30	92.51
CHILD SUPP-VOLUNTARY	58	35	3,013.58	86.10
RETIRE./PENSIONS	59	2	357.00	178.50
CASH CONTRIBUTIONS	60	1	20.00	20.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	2	505.00	252.50
OTHER	63	13	878.66	67.58
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	139	11,912.19	85.69
NET EARN + MISC INC	E7	242	19,068.89	78.79

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	1547	188,769.50	122.02
SHELTER	21	1513	81,160.40	53.64
UTILITIES	22	1213	18,584.33	15.32
EDUC. TUITION	23	5	382.11	76.42
TRANSPORTATION	24	1094	16,899.40	15.44
CHILD CARE	25	573	37,924.24	66.18
TELEPHONE	26	2	25.40	12.70
UNIFORM TOOLS	27	1	6.50	6.50
MEDICAL NEEDS	28	2	8.00	4.00
SPECIAL DIETS	29	32	128.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	13	257.33	19.79
TOTAL REQUIREMENTS	R1	1547	340,472.56	220.08
TOTAL NEED LESS INC	R2	1544	322,307.71	208.74
MONEY PAYMENT NEAR $	P1	1547	288,951.00	186.78

TOTAL CASES WITH ZERO PAY 11

ADULTS 2102

CHILDREN 4534

41B

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY ADC

MONTH OF MAY 1970

PROGRAM ESETRI

RUN DATE 5-22-70

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	46	8,532.15	185.48
ELEM/SEC EDUCATION	02	17	2,403.34	141.37
WIN PROGRAM	03	4	868.93	217.23
PRIVATE EMPLOYMENT	04	1658	307,776.82	185.63
OTHER EMPLOYMENT	05	355	61,806.69	174.10
TOTAL EARNINGS	E1	2046	360,251.51	176.07
ALLOWABLE EARN EXPENSE				
GENERAL	10	2040	33,733.86	16.53
TRANSPORTATION	11	1596	39,028.57	24.45
CHILD CARE	12	347	10,922.78	31.47
UNION DUES	13	93	1,353.05	14.54
UNIFORM TOOLS	14	285	2,375.08	8.33
TELEPHONE	15	77	1,001.92	13.01
TOTAL ALLOW EXPENSE	E2	2015	84,712.16	42.04
EARNING MINUS EXPENSE	E3	1990	272,858.19	137.11
$30.00 AND 1/3	E4	1909	167,986.79	87.99
NET EARNINGS	E5	1634	111,814.14	68.42
MISCELLANEOUS INCOME				
OASDI	51	950	83,305.37	87.68
RR BENEFIT	52	13	1,177.50	90.57
VETERAN BENEFITS	53	186	12,430.13	66.82
UNEMPLOY. COMP.	54	4	552.55	138.13
WORKMANS COMP.	55	24	3,103.63	129.31
SHELTER UTILITY FOOD	56	629	25,340.67	40.28
CHILD SUPP-CT ORDER	57	228	16,365.13	71.77
CHILD SUPP-VOLUNTARY	58	349	22,911.71	65.64
RETIRE./PENSIONS	59	13	1,642.70	$126.36
CASH CONTRIBUTIONS	60	34	1,629.34	47.92
SPOUSE'S INCOME	61	20	1,376.08	68.80
PROTECTIVE PMTS	62	7	497.00	71.00
OTHER	63	259	15,016.28	57.97
V.A.AID AND ATTENDANCE	64	6	302.78	50.46
TOTAL MISC. INCOME	E6	2512	181,721.51	72.34
NET EARN + MISC INC	E7	4039	297,615.93	73.68

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	17837	1,729,410.48	$...99
SHELTER	21	16900	837,020.73	49.52
UTILITIES	22	13802	177,599.01	12.86
EDUC. TUITION	23	37	1,452.44	39.25
TRANSPORTATION	24	100	1,592.70	15.92
CHILD CARE	25	1474	89,662.36	60.82
TELEPHONE	26	12	175.18	14.59
UNIFORM TOOLS	27	2	39.55	19.77
MEDICAL NEEDS	28	17	301.40	17.72
SPECIAL DIETS	29	771	3,196.62	4.14
GUIDE DOG	30	1	4.00	4.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	6	440.00	73.33
RESTAURANT MEALS	34	1	4.00	4.00
HOME CARE	35	1	108.33	108.33
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	2	9.59	4.79
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	1	10.00	10.00
OTHER	40	208	5,154.63	24.78
TOTAL REQUIREMENTS	R1	17835	2,831,595.20	158.76
TOTAL NEED LESS INC	R2	17653	2,522,477.87	142.89
MONEY PAYMENT NEAR $	P1	17991	2,525,884.42	140.39

TOTAL CASES WITH ZERO PAY 126

ADULTS 15729
CHILDREN 47026

41S

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

PROGRAM ESETR1

COUNTY ALL

CATEGORY ADC-U

MONTH OF MAY 1970

RUN DATE 5-22-70

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
MOTA	01	3	568.00	189.33
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	0	.00	.00
PRIVATE EMPLOYMENT	04	17	2,299.34	135.25
OTHER EMPLOYMENT	05	22	2,309.74	104.98
TOTAL EARNINGS	E1	39	4,649.18	119.20
ALLOWABLE EARN EXPENSE				
GENERAL	10	38	600.08	15.79
TRANSPORTATION	11	30	342.27	11.40
CHILD CARE	12	2	20.85	10.42
UNION DUES	13	0	.00	.00
UNIFORM TOOLS	14	7	75.54	10.79
TELEPHONE	15	1	5.19	5.19
TOTAL ALLOW EXPENSE	E2	38	1,023.74	26.94
EARNING MINUS EXPENSE	E3	39	3,610.96	92.58
$30.00 AND 1/3	E4	37	2,349.59	63.50
NET EARNINGS	E5	29	1,282.01	44.20
MISCELLANEOUS INCOME				
OASDI	51	4	219.20	54.80
RR BENEFIT	52	0	.00	.00
VETERAN BENEFITS	53	5	155.00	31.00
UNEMPLOY. COMP.	54	2	173.00	86.50
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	13	690.58	53.12
CHILD SUPP-CT ORDER	57	1	30.00	30.00
CHILD SUPP-VOLUNTARY	58	0	.00	.00
RETIRE./PENSIONS	59	0	.00	.00
CASH CONTRIBUTIONS	60	0	.00	.00
SPOUSE'S INCOME	61	2	528.00	264.00
PROTECTIVE PMTS	62	4	759.00	189.75
OTHER	63	7	599.25	85.60
V.A.AID AND ATTENDANCE	64	1	.18	.18
TOTAL MISC. INCOME	E6	38	3,233.35	85.08
NET EARN + MISC INC	E7	63	4,371.88	69.39

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PN	20	515	68,341.00	132.73
SHELTER	21	503	27,605.15	54.88
UTILITIES	22	412	6,443.00	15.63
EDUC. TUITION	23	0	.00	.00
TRANSPORTATION	24	14	228.00	16.28
CHILD CARE	25	2	110.00	55.00
TELEPHONE	26	0	.00	.00
UNIFORM TOOLS	27	0	.00	.00
MEDICAL NEEDS	28	0	.00	.00
SPECIAL DIETS	29	47	188.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	1	4.00	4.00
OTHER	40	6	214.00	35.66
TOTAL REQUIREMENTS	R1	514	102,642.15	199.72
TOTAL NEED LESS INC	R2	508	98,023.83	192.96
MONEY PAYMENT NEAR 0	P1	525	102,525.00	195.28

TOTAL CASES WITH ZERO PAY 17

ADULTS	1026
CHILDREN	1532

Issued by Research and Statistics - June 1, 1970

Reeser Repos. PA 70-8

DEPARTMENT OF SOCIAL SERVICES

FINANCIAL DATA STATISTICS

COUNTY ALL

CATEGORY WIN

MONTH OF MAY 1970

PROGRAM ESETR1

RUN DATE 5-22-70

INCOME AFTER DEDUCTIONS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
ROTA	01	26	5,064.15	194.77
ELEM/SEC EDUCATION	02	0	.00	.00
WIN PROGRAM	03	13	983.81	75.67
PRIVATE EMPLOYMENT	04	136	22,343.94	164.29
OTHER EMPLOYMENT	05	35	4,912.30	140.35
TOTAL EARNINGS	E1	186	28,042.18	149.16
ALLOWABLE EARN EXPENSE				
GENERAL	10	180	3,129.25	17.38
TRANSPORTATION	11	141	3,722.57	26.40
CHILD CARE	12	27	766.18	28.37
UNION DUES	13	8	77.13	9.64
UNIFORM TOOLS	14	27	264.64	9.80
TELEPHONE	15	7	87.09	12.44
TOTAL ALLOW EXPENSE	E2	177	7,662.10	43.28
EARNING MINUS EXPENSE	E3	175	20,245.56	115.68
$30.00 AND 1/3	E4	170	13,254.73	77.96
NET EARNINGS	E5	118	7,154.86	60.63
MISCELLANEOUS INCOME				
OASDI	51	39	4,124.90	105.76
RR BENEFIT	52	1	111.10	111.10
VETERAN BENEFITS	53	18	1,108.45	61.58
UNEMPLOY. COMP.	54	0	.00	.00
WORKMANS COMP.	55	0	.00	.00
SHELTER UTILITY FOOD	56	26	1,082.10	41.61
CHILD SUPP-CT ORDER	57	26	2,411.10	92.73
CHILD SUPP-VOLUNTARY	58	43	3,428.48	79.73
RETIRE./PENSIONS	59	2	250.00	125.00
CASH CONTRIBUTIONS	60	1	20.00	20.00
SPOUSE'S INCOME	61	0	.00	.00
PROTECTIVE PMTS	62	3	530.00	176.66
OTHER	63	14	878.74	62.76
V.A.AID AND ATTENDANCE	64	0	.00	.00
TOTAL MISC. INCOME	E6	156	12,929.27	82.87
NET EARN + MISC INC	E7	275	21,278.78	77.37

REQUIREMENTS	CODE	CASES	TOTAL AMOUNT	AVERAGE PER CASE
STD ALLOW FOOD CL PR	20	1669	204,041.90	122.25
SHELTER	21	1629	87,568.45	53.75
UTILITIES	22	1322	20,111.67	15.21
EDUC. TUITION	23	7	321.00	45.85
TRANSPORTATION	24	1166	18,236.60	15.61
CHILD CARE	25	604	40,467.04	66.99
TELEPHONE	26	1	3.40	3.40
UNIFORM TOOLS	27	2	8.50	4.25
MEDICAL NEEDS	28	2	8.00	4.00
SPECIAL DIETS	29	39	156.00	4.00
GUIDE DOG	30	0	.00	.00
GUIDE SERVICE	31	0	.00	.00
COOKING UTENSILS	32	0	.00	.00
ROOM AND BOARD	33	0	.00	.00
RESTAURANT MEALS	34	0	.00	.00
HOME CARE	35	0	.00	.00
CLEAN LIVING QTRS	36	0	.00	.00
LAUNDRY	37	0	.00	.00
MEAL PREPARATION	38	0	.00	.00
N.H. PERSONAL	39	0	.00	.00
OTHER	40	12	255.33	21.27
TOTAL REQUIREMENTS	R1	1669	367,416.03	220.14
TOTAL NEED LESS INC	R2	1665	347,389.64	208.64
MONEY PAYMENT NEAR $	P1	1667	311,565.23	186.90

TOTAL CASES WITH ZERO PAY 11

ADULTS 2263

CHILDREN 4893

410

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs.

vs.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants.

[Filed Jan. 13, 1972]

Legal Services Office of El Paso County by Messrs. James W. Kin and Tom W. Armour, Attorneys at Law, 300 Old Colorado Commercial Bank Building, Colorado Springs, Colorado, for Plaintiffs; Mr. Duke W. Dunbar, Attorney General and Mr. John P. Moore, Deputy Attorney General by Mr. Douglas D. Doane, Special Assistant Attorney General, 104 State Capitol, Denver, Colorado, for State defendants; Mr. Norman A. Palermo, Attorney at Law, Suite 602 Pikes Peak Building, Colorado Springs, Colorado, for defendant Pobanz.

MEMORANDUM OPINION AND ORDER

ARRAJ, Chief Judge

This case raises the question of whether Colorado has complied with the requirements of § 402(a)(7) of the Social Security Act, 42, U.S.C. § 602(a)(7),[1] that state welfare agencies, in figuring financial need under the Aid to Families with Dependent Children (AFDC) program, "shall . . . take into consideration . . . any expenses reasonably attributable" to the earning of income by an employed welfare recipient, when it allows a flat thirty dollar credit regardless of the recipient's actual work-related expenses. Plaintiff brings this as a class action on behalf of all employed welfare recipients whose actual work-related expenses exceed thirty dollars per month, but who are allowed credit for only thirty dollars under the provisions of Section 4313.13 of the Colorado Division of Public Welfare Staff Manual, Vol. IV,[2] and the practices of the defendants. She claims that the Colorado rules and practices violate § 402(a)(7) of the federal act and do not meet the requirements of the regulations adopted by the Department of Health, Education and Welfare. 45 C.F.R.

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[1] Title 42 U.S.C. § 602(a)(7) provides:

(a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual living in the same home as such child and relative whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; . . .

[2] Section 4313.13 includes the following provision:

For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone additional food or personal needs, etc, which are an obligation due to the employment, an allowance of $30 per month is made for such costs.

§ 233.20(a)(3)(iv).[3] She also raises constitutional questions which are not under consideration at this time.[4] The case is presently before us on both parties' motions for summary judgment.

The facts are not in significant dispute. The plaintiff Ascension Vialpando was employed and receiving an Aid to Families with Dependent Children grant of seventy-four dollars per month prior to July, 1970. Effective July 1, 1970, the defendants promulgated a new regulation limiting the amount of work-related expenses which a recipient could have exempted from deductions in determining AFDC grants to thirty dollars (besides mandatory payroll deductions). This regulation reduced the plaintiff's budgeted work-expense figure from $181.83 to $85.72 ($55.72 mandatory payroll deductions plus thirty dollars), making the plaintiff ineligible for AFDC. Plaintiff claims that while in theory she should have been able to be self-sufficient, since her earnings adequately provided for her budgeted needs, in fact $96.11 of her earnings had to be used to earn that income and was not available to

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[3] Title 45 C.F.R. § 233.20 provides:

(a) Requirements for State Plans. A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:

. . .

(3) Income and resources; . . .

(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment; (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, . . . (c) only such net income as is actually available for current use on a regular basis will be considered and only currently available resources will be considered; . . .

. . . .

(iv) Provide that, in determining the availability of income and resources, the following will not be included as ncome: (a) Income equal to expenses reasonably attributable to the earning of income; . . .

[4] We will recommend that a three-judge court be convened only if the case cannot be disposed of on the statutory ground. Davidson v. Shaffer, C.A. No. C-3224 (D. Colo. Nov. 10, 1971); see Rosado v. Wyman, 397 U.S. 397, 40 (1970).

be applied to her basic needs. In August, 1970, the plaintiff terminated her employment and again received an AFDC grant. On September 1, 1971, plaintiff returned to work and now has expenses of over $100 per month which she alleges are reasonably related to her employment.

Section 402(a)(7) of the Social Security Act amendments of 1962 was designed to encourage welfare recipients to obtain employment, even if their salaries from that employment would not enable them to be completely self-sufficient. Congress recognized that certain extra expenses are incurred by a person holding a job. The Senate report on the bill explains the purposes of this section:

> Under present law, all income of recipients of public assistance is taken into account (with a limited exception under title X in determining need. States are permitted, but not required, to take into consideration the expenses an individual has in earning any income (this practice is not uniform in the country and in a substantial number of State full consideration of such expenses is not given). The committee believes that it is only reasonable for the States to take these expenses fully into account. Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore added a provision in all assistance titles requiring the States to give consideration to any expense reasonably attributable to the earning of income. S. REP. NO. 1589,

87th Cong., 2d Sess., found at U.S., CODE CONG. & AD. NEWS 1943, 1959-1960 (1962).

We believe that Congress clearly intended for states to give full credit for all expenses reasonably related to a recipient's employment.

The question of the validity of Colorado's § 4313.13 depends then upon whether a state must comply with all the provisions of the Social Security Act when it accepts federal funds thereunder or whether an approximate compliance is sufficient. The defendant argues that thirty dollars per month is a reasonable approximation of the actual work-related expenses of most employed recipients and that by taking this sum into consideration they have complied sufficiently with § 402(a)(7) of the Social Security Act. "Since the $30 figure accurately reflects the average necessary expenses, an allowance in that amount should be sufficient in most cases." Defendants' Memorandum Brief, p. 7. We note, however, that several recent Supreme Court decisions seem to require quite strict compliance with federal standards. *See, e.g., California Department of Human Resource Development v. Java,* 91 S. Ct. 1347 (1971); *Rosado v. Wyman,* 397 U.S. 397 (1970); *King v. Smith,* 392 U.S. 309 (1968). The only support for the proposition that a state may "approximately" comply with federal requirements that we can find in the defendants' brief and through our own research is dicta in *Rosado v. Wyman* and in *Amos v. Engleman,* C.A. No. 1340-69 (D.N.J., July 6, 1970). We do not read either case as actually supporting the proposition or helping the defendants' position.

In *Rosado* the Court invalidated a New York law which would have redefined the "standard of need" used

to determine eligibility for welfare assistance by replacing itemized grants with a flat grant maximum and eliminating the "special grant" program. The objection to this law was that it would have reduced the content of New York's standard of need, thus lowering it, which the Court found to be prohibited by § 402(a)(23). This section

> invalidates any state program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of § 402(a)(23), unless a State can demonstrate that the items formerly included no longer constituted part of the reality of existence for the majority of welfare recipients. We do not, of course, *hold that New York may not,* consistently with the federal statutes, *consolidate items on the basis of statistical averages. . .* Providing all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with § 402 (a)(23) redefine its method for determining need. . . What is at the heart of this dispute is the elimination of special grants in the New York program, not the system of maximum grants based on average age. (Emphasis added.)

We cannot read this as a carte blanche to the states to reasonably average any and all figures to save administrative costs, as the defendants would apparently like for us to do. The standard of need is defined by the states, and the particular method chosen by the states, provided it does not serve to skirt the reevaluation requirements of § 602(a)(23), does not affect any federal policy. Thus, the use of statistical averages in computing items of need is in *complete* compliance with the requirements of the

the language and purposes of the Social Security Act. Social Security Act. The averaging discussed in *Rosado* is legitimate not because *approximate* compliance with the Act is sufficient, but because this particular method of setting a standard of need is completely consistent with

On the other hand, when Colorado does not take employment expenses in excess of thirty dollars per month into consideration in determining need, it provides a disincentive to all recipients whose work-related expenses exceed or would exceed thirty dollars from seeking or retaining employment. This is in direct opposition to the federal policy contained in § 402(a)(7). For this reason we find the state regulation invalid and hold that the defendants should be enjoined from enforcing such regulation. This same conclusion was reached in *Williford v. Laupheimer*, 311 F. Supp. 720 (E.D. Pa. 1969). *See also, Alameda County v. Carleson*, 97 Cal. Rptr. 385, 488 P.2d 953 (1971).

Apparently, the only other case to consider a provision similar to Colorado's was *Amos v. Engleman, supra.* The court enjoined the enforcement of certain New Jersey provisions as violative of 402(a)(8), but refused to disapprove a $50 flat deduction for expenses reasonably attributable to employment, holding:

> There is nothing in this record to establish that $50 is an unreasonable amount for business expense or that the plaintiffs in this action or the person they represented have incurred monthly business expenses in excess of $50. We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the

allowance is adequate to cover all actual expenses. *Id.* at 21.

The court seems to base its decision on the plaintiffs' failure to allege or show actual work expenses in excess of $50. The court indicated that the plaintiffs were not precluded from showing the $50 to be "unreasonable or inadequate." The court also, however, quotes from *Rosado,* and adds, "If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses." *Id.* at 22. As stated above, we feel this analogy is unsound; therefore, to this extent we may disagree with *Amos v. Engleman.* We would agree, however, that the requirements of the Social Security Act must be "strictly applied" to the states. *Id.* at 17.

We conclude that Section 4313.13 of the Colorado Division of Public Welfare staff manual, Vol. IV, contravenes § 402(a)(7) of the Social Security Act [42 U.S.C. § 602(a)(7)]. We further conclude that employment expenses under the AFDC program can be standardized only in accordance with § 3140 of the Handbook of Public Assistance Administration. It is therefore

ORDERED that plaintiff's motion for a summary judgment be and the same hereby is granted, and the defendants' motion for a summary judgment be and the same hereby is denied.

Dated at Denver, Colorado, this 13th day of January, 1972.

BY THE COURT:
ALFRED A. ARRAJ,
Chief Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs.

vs.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants.

JUDGMENT

[Filed Feb. 17, 1972]

This action having come on for hearing before the Court on December 17, 1971, Honorable Alfred A. Arraj, Chief Judge, United States District Court, presiding, and the issues having been duly heard and an opinion having been duly rendered on January 13, 1972.

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED as follows:

1. That the Plaintiff's Motion for Summary Judgment is hereby granted and the Defendants' Cross-Motion for Summary Judgment is hereby denied on conformance with the opinion rendered by this Court on January 13, 1972.

2. The defendants are granted a stay of ten days from and after the date of entry of this judgment for the purposes of seeking an appeal or review of this ruling. This judgment shall not be effective until said ten day period has expired.

3. That the State of Colorado, the State Board of Social Services and Con F. Shea, Executive Director of the Department of Social Services, State of Colorado, are hereby ordered and directed at the next regularly scheduled meeting of the State Board of Social Services, after this judgment becomes effective to implement the modification of Section 4313.13 of the Colorado Division of Public Welfare Manual, Vol. IV, to comply with the Federal Social Security Act and H.E.W. regulations as is set out in the Court's Opinion of January 13, 1972.

4. That this case is not and has not been a class action. Accordingly, it does not afford declaratory relief to the members of the alleged class.

5. That this judgment confers no right upon the members of the alleged class to retroactive payments.

6. That pursuant to the Order of the Court entered January 13, 1972, the named plaintiffs are entitled to damages due to the defendants' miscalculation of plaintiffs' work expenses and that the amount of such damages shall be determined by the administrative process of the defendants' state and county agencies.

7. Each party shall bear their own costs.

Dated February 17, 1972.

ALFRED A. ARRAJ
Chief Judge
United States District Court

Approved as to Form:
JAMES W. KIN
Attorneys for Plaintiffs

DOUGLAS D. DOANE
Attorney for State Defendants

NORMAN A. PALERMO
Attorney for Defendant Pobanz

[Entered on the Docket Feb. 18, 1972]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2449

(Title Omitted in Printing)

AFFIDAVIT OF JOHN H. JONES

Concerning the derivation of Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual.

STATE OF COLORADO
CITY AND COUNTY OF DENVER ss.

JOHN H. JONES, duly sworn, deposes and says:

1. That he is the Director of the Program Planning and Development Division of the Colorado Department of Social Services.

2. Among other duties, he is responsible for the drafting of rules and amendments to the rules of the Department of Social Services. Such rules are published in the Colorado Division of Public Welfare Staff Manual.

3. He also is responsible for forwarding such rules and amendments to rules to the Denver regional office of the United States Department of Health, Education, and Welfare for approval and receiving and maintaining the records thereof.

4. New rules or amendments to existing rules are referred to by Transmittal Letter (T.L.) numbers. Using the T.L. numbers shown on the face of a series of amendments to the rules one can determine the sequence in which the rules were adopted by the State Board of Social Services.

5. The Transmital Letter is a separate document

which transmits the new rule material to the county welfare departments and other interested persons and explains how the new rule material affects the then existing rules.

6. Transmittal Letter 1008, and the rules attached thereto, effective March, 1970. The rules attached to T.L. 1008 provided for the disregard of work related expenses on an item by item basis with no maximum or average. A copy of Rule 4313.13 as transmitted by T.L. 1008 is attached as Exhibit "A" to this Affidavit.

7. T.L. 1023, and the rules attached thereto, superseded T.L. 1008, and the rules attached thereto, effective March, 1970. A copy is attached here to as Exhibit "B".

8. T.L. 1026, and the rules attached thereto, superseded T.L. 1023, and the rules attached thereto, effective March of 1970. A copy of Rule 4313.13, as transmitted by T.L. 1026, is attached here to as Exhibit "C". It was approved by HEW as shown by Exhibit "D" on May 13, 1970.

9. To give the counties advance warning of a major change in the procedure for handling work expenses, T.L. 1033 was released under a date of May 22, 1970. T.L. 1033, and the rules attached thereto, would have superseded T.L. 1026, and the rules attached thereto, effective July 1, 1970. Exhibit "E" to this Affidavit shows that this rule was received by the Denver regional office of HEW on October 7, 1970, and approved by HEW on November 12, 1970. Exhibit "F" hereto shows that the T.L. was mailed prior to final approval by the State Board of Social Services of the rules attached thereto. Exhibit

"G" shows the Rule 4313.13 as transmitted by T.L. 1033. Since T.L. 1033, and the rules attached thereto, was superseded before it became effective it was transmitted to HEW only by administrative error.

10. T.L. 1033A, and the rules attached thereto, superseded both T.L. 1033 and T.L. 1026, and the rules attached thereto, effective July 1, 1970. Exhibit "H" hereto shows that T.L. 1033A, and the attached rules, were approved by the HEW Denver regional office on July 23, 1970. Exhibit "I" is a copy of T.L. 1033A, which indicates that the rule transmitted by T.L. 1033 did not go into effect. This is confirmed by Exhibit "J" which shows that T.L. 1033A supersedes T.L. 1033 and T.L. 1026.

11. T.L. 1033C, and the rules attached thereto, superseded T.L. 1033A, and the rules attached thereto, effective July, 1970. Exhibit "K" shows that the rule amendment being transmited was approved by the State Board of Social Services in July of 1970. Exhibit "L" shows that Rule 4313.13 was amended to determine the number of exemptions for mandatory deductions.

12. T.L. 1128, and the rules attached thereto, superseded T.L. 1033C, and the rules attached thereto, effective June 1, 1971. The rule was amended at this time to add a provision providing for employment expenses incurred in the operation of a day care center. (See Exhibit "M"). The rule as amended pursuant to T.L. 1128 was approved by the HEW Denver regional office on February 10, 1972. (See Exhibit "N").

13. Since the Rule 4313.13 as transmitted by T.L. 1033 never came into effect, the first time that said rule

provided for a flat $30 allowance per month for employment expenses was in the amendments transmitted with T.L. 1033A. The $30 allowance was provided pursuant to T.L. 1033A by the fifth paragraph of Rule 4313.13, "For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, et cetera, which are an obligation due to the employment, allowance of $30 per month is made for such costs." Said fifth paragraph in Rule 4313.13 is the subject of this litigation. Said fifth paragraph was approved by James R. Burress, Regional Commissioner, SRS, on July 23, 1970, and has not been amended since that time. Said fifth paragraph has been in effect and binding on the county departments of public welfare continuously since July of 1970. Mr. Burress has reconfirmed his approval of the said fifth paragraph of Rules 4313.13 as recently as February 10, 1972, when Rule 4313.13, as transmitted by T.L. 1128, containing said fifth paragraph, was approved by Mr. Burress.

JOHN H. JONES

Subscribed and sworn to before me this 29th day of February, 1972.

Witness my hand and notarial seal.
My commission expires: September 12, 1973.

ARLINE H. KRASOVICH
Notary Public

CONSIDERATION OF INCOME
CASH INCOME

4313.13—Cont.

Effective: March, 1970
T.L. No. 1008

Supersedes: T.L. No. 863

4313.13 • EMPLOYMENT INCOME.

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For the purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. • For the definition of unemployment for ADC-U, see 4232.61.•

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315.3.

Net wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay — less mandatory deductions, such as for social security and federal and state taxes. (Payroll savings and other deductions optional with the employee are not included.) • See 4313.131 for computations involved in additional allowances on earnings for AFDC cases. •

Employment expenses which are deducted from the gross amount received by an employed recipient include, but are not restricted to:

Transportation expenses:
Public transportation to and from work is allowed at actual cost. When the recipient must use his own car as transporation to and from work, 5c a mile is allowed, plus parking fees if required. Purchase, repair, or upkeep of a vehicle, providing it is essential to retain employment and the plan therefore is approved by the county department.

• Revised.

COLO. DIVSN. PUB. WELFARE
STAFF MANUAL — VOL IV.

PUBLIC ASSISTANCE
DETERMINATION OF NEED

CONSIDERATION OF INCOME
CASH INCOME

Effective: March, 1970
T.L. No. 1023
Supersedes: T.L. No. 1008

4313.13 * EMPLOYMENT INCOME.

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-receipient spouses, in AND, AB, and OAP, see 4315.3.

Net wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay — less mandatory deductions, such as for social security and federal and state taxes. (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances on earnings for AFDC cases.

* From the net earnings, the first fifteen ($15.00) dollars earned in any calendar month from full or part-time employment is deducted to cover any additional food, clothing, (exclusive of any special clothing needs), or personal needs due to employment. For additional considerations in AB earned income see 4316.1. *

Employment expenses which are deducted from the gross amount received by an employed recipient include, but are not restricted to:

Transportation expenses:
Public transporation to and from work is allowed at actual cost. When the recipient must use his own car as transporation to and from work, 5c a mile is allowed, plus parking, fees if required. Purchase, repair, or upkeep of a vehicle, providing it is essential to retain employment and the plan therefore is approved by the county department.

* Reissued because of omission.

EXHIBIT "B" TO AFFIDAVIT OF
JOHN H. JONES

4313.13—Cont.

Effective: May, 1970
T.L. No. 1026

Supersedes: T.L. 1023

4313.13 * EMPLOYMENT INCOME.

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315.3.

Net wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay — less mandatory deductions, such as for social security and federal and state taxes. (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances on earnings for AFDC cases.

From the net earnings, the first fifteen ($15.00) dollars earned in any calendar month from full or part-time employment is deducted to cover any additional food, clothing (exclusive of any special clothing needs), or personal needs due to employment. For additional considerations in AB earned income see 4316.1.

Employment expenses which are deducted from the gross amount received by an employed recipient include, but are not restricted to:

Transportation expenses:

•Public transportation to and from work is allowed at actual cost. When a recipient must use his own car as transportation to and from work, an allowance of up to a maximum of $30 a month is provided for travel at the rate of 5c a mile for parking fees and for the purchase, repair, or upkeep of a vehicle.
In unusual circumstances, an additional allowance may be provided for transportation upon approval by the county department. To determine

. . .

Department of Health, Education, and Welfare
Social and Rehabilitation Service
Form APA-553 (Rev. 1/52)
Budget Bureau No. 122-R0083

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To:
Department of Health, Education, and Welfare
Regional Office, Federal Office Building
Attention: Mr. James R. Burress, Regional Commissioner — SRS
2. Date May 6, 1970
3. Submittal No. 701
4. From: Colorado Department of Social Services

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: CON F. SHEA
6. Title: Executive Director

Identification of material and program affected	Outline reference	Effective date	Material superseded	Disposition	
7	8	9	10	1/11	12
I. REVISIONS TO STAFF MANUAL VOLUME IV					
A. T.L. No. 1023 3/27/70				O	
1. Section 4313.13 (C)	IV	3/70	Pages 4313-4313-12	*	
2. Section 4313.132 (C)	IV	3/70	Page 4313.132-4313.133	A	
B. T.L. No. 1026 4/14/70				O	
1. Section 4313.13 (C)	IV	3/70	Pages 4313-4313.12 and 4313.13-4313.131	A	
* Superseded by item B1.					

13. To: Colorado Division of Public Welfare.
14. Date 5/13/70.
15. The above materials were received in the regional office on May 11, 1970.
16. Items A and AL accepted for incorporation 5/13/70.
ALLEN M. A. BUCKINGHAM, Regional Commissioner, SRS

[1] The symbols inserted indicate that the items:
(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.
(NL) Is under consideration and notice of action will be sent later.

EXHIBIT "D" TO AFFIDAVIT OF JOHN H. JONES

Department of Health, Education, and Welfare
Social and Rehabilitation Service
Washington, D.C. 20201

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL, SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

To: Regional Commissioner
Social and Rehabilitation Service
Department of Health, Education, and Welfare

Transmittal Number: 70-11

1. Program Identification: Public Assistance Administration
2. Type of Action Submitted for Approval: Amendment

Effective Date: July, August or September, 1970 as shown on attached DSS T.L.'s

Complete Remainder of Part 2 If This is an Amendment: Federal Regulation Citation: 45 CFR 233.20

Number of the Plan Section or Attachment: Determination of Need

Number of the Superseded Plan Section or Attachment: As shown on DSS T.L.'s

Subject of Amendment:

Revised Standards of Assistance

Governor's Review: Governor's Office Reported No Comment

Signature of State Agency Official: CON F. SHEA

Title: Executive Director:

Date: September 30, 1970

Date Received in Regional Office: October 7, 1970
Region: VIII

Signature of Regional Official: ALLEN M. A. BUCKINGHAM

Title: Regional Commissioner

Date: 11/12/70
Accepted for Incorporation into the State's Approved Plan.

Return to:
Colorado Department of Social Services
1575 Sherman Street
Denver, Colorado 80203
Attention: John H. Jones

EXHIBIT "E" TO AFFIDAVIT OF JOHN H. JONES

COLORADO DEPARTMENT OF SOCIAL SERVICES
DIVISION OF PUBLIC WELFARE
1600 Sherman, Denver, Colorado 80203

TRANSMITTAL LETTER

Transmittal Letter No. 1033

Release Date: May 22, 1970

Release Authorization: Charline J. Birkins

Revision to the Staff Manual, Volume IV;
Section — 4313, 4320

Please make the changes described below:

Please make the following changes in Volume IV; Section 4313 and 4320, effective July, 1970, contingent on final Board approval on June 5, 1970.

I.

Remove Pages 4313-4313.12 and replace it with the atached page bearing the same number. On page 4313.13-4313.131 delete the remainder of rule No. 4313.13 which is contained in the first six paragraphs.

The revision places a limit of $30 per month for all expenses of employment which formerly were contained in the last ten paragraphs of Rule 4313.13.

The State Board has passed this rule with the $30 maximum contingent on an analysis concerning the accuracy of that amount as an average for expenses of employment. Such analysis should be ready by the date of the next Board meeting.

Like the changes in Standards of Assistance, which follow, this rule change is being provided in advance of

final approval by the Board in order that county departments may begin work on grant changes for July.

Please note that the $30 maximum, in the event that analysis "proves-out" a higher amount, may require change. If the amount to be substituted is higher, retroactive payments may be necessary concerning the affected cases. In any event, you will be notified as quickly as possible as to the outcome. We regret that we do not have a firm figure in this matter at the present time.

II.

Remove four pages; 4321 - Concl through 4322.21 - Concl. Remove also three pages; 4324.1 - 4324.14 through 4324.3 - 4324.34, and two pages; 4325 - 4325.2 and 4325.2 - Concl. Replace these with the attached pages similarly numbered.

The revisions contained are:

A. A 9% increase in Standards of Assistance for basic allowances in AFDC cases, covering the period from September, 1967 to July, 1969. During this period a 9% increase in the cost of living occurred.

B. A $4 per person increase for AB and AND recipients. This amount is intended to provide a 5% increase made possible by funds provided from the State Legislature.

(Cont.)

4313.13—Cont.

Effective: July, 1970 T.L. No. 1033

Supersedes: T. L. No. 1026

4313.13 * EMPLOYMENT INCOME.

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315.3.

New wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay—less mandatory deductions, such as for social security and federal and state taxes. (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances on earnings for AFDC cases.

* For recipients having employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, a deduction of such costs is made on an "as paid" basis but not more than $30 per month. The circumstances of employment which require such cost must be noted in the case record*

* Revised.

EXHIBIT "G" TO AFFIDAVIT OF
JOHN H. JONES

Department of Health, Education, and Welfare
Social and Rehabilitation Service
Form APA-553 (Rev. 1/52)
Budget Bureau No. 122-R0083

SUBMITTAL AND REPORT OF ACTION ON PUBLIC ASSISTANCE PLAN MATERIALS

1. To
Department of Health, Education, and Welfare
Regional Office, Federal Office Building
Attention: Mr. James R. Burress, Regional Commissioner, SRS
2. Date July 13, 1970
3. Submittal No. 710
4. From: Colorado Department of Social Services

Enclosed are six copies of the following materials submitted for approval as part of the State's plans for public assistance:

5. Signature: CON F. SHEA
6. Title: Executive Director

Identification of material and program affected	Outline reference	Effective date	Material superseded	Disposition	
7	8	9	10	1/11	12
I. REVISIONS TO STAFF MANUAL VOLUME IV					
A.					
T.L. No. 997 12/29/69				O	
1. Section 4310 (A,B,C,D)	IV	12/69	Page 4300-4310	A	
B.					
T.L. No. 1030 6/18/70				O	
1. Section 4616 (C)	IV	6/70		A	
C.					
T.L. No. 1033-A 6/9/70				O	
1. Section 4313.13 (C)	IV	7/70	Page 4313-4313.12	A	
2. Section 4613.81 (C)	IV	7/70	Page 4613.7-4613.8	O	
D.					
T.L. No. 1039 5/26/70				O	
1. Section 4132 (A,B,C,D)	IV	5/70	Page 4132-4132.4	A	

13. To: Division of Public Welfare.
14. Date 7/23/70.
15. The above materials were received in the regional office on July 17, 1970
16. Items A and AL accepted for incorporation 7/23/70.

JAMES R. BURRESS, Regional Commissioner, SRS

[1] The symbols inserted indicate that the item:

(A) Has been accepted for incorporation into the State's approved plan.
(AL) Has been accepted for incorporation into the State's approved plan, comments in letters.
(O) Has been filed as other than plan material.

(NL) Is under consideration and notice of action will be sent later.

EXHIBIT "H" TO AFFIDAVIT OF JOHN H. JONES

COLORADO DEPARTMENT OF SOCIAL SERVICES
DIVISION OF PUBLIC WELFARE

1600 Sherman, Denver, Colorado 80203

TRANSMITTAL LETTER

Transmittal Letter No. 1033-A

Release Date: June 9, 1970

Release Authorization: Charline J. Birkins

Revision to the Staff Manual, Vol. IV;
Section 4313 and 4613, Effective July, 1970

Please make the changes described below:

Remove Page4313-4313.12 and replace it with the attached page bearing the same number.

Last month the Board passed a revision to the rules establishing an employment expense allowance on an as-paid basis "up to $30." Since that time we have found that in the determination of the employment expense allowance, a flat rate of $30 can well be substituted for the "up to $30." This will reduce the administrative work in determining these costs on an exact basis. For these reasons the Board passed a further change in the rule effective July, 1970 to provide a flat allowance of employment expense as a deduction from employment income.

Remove Page 4613.81 - Concl. and replace it with the attached page bearing the same number. The same rule also has been made with regard to WIN trainees as a

flat allowance when such individuals require an allowance for transportation to reach their place of training.

The detailed procedure requiring cumbersome computation of needs and so on, has been deleted in favor of a flat $30 monthly allowance in WIN cases, when such individual requires transportation.

EXHIBIT "I" TO AFFIDAVIT OF
JOHN H. JONES

COLO. DIVSN. PUB. WELFARE
STAFF MANUAL — VOL. IV

PUBLIC ASSISTANCE
DETERMINATION OF NEED

CONSIDERATION OF INCOME
CASH INCOME

4313.13—Cont.

Effective: July, 1970

T.L. No. 1033-A

Supersedes: T.L. No. 1033 & No. 1026

4313.13 * EMPLOYMENT INCOME

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or

place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315.3.

New wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay — less mandatory deductions, such as for social security and federal and state taxes. (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances on earnings for AFDC cases.

* For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, an allowance of $30 per month is made for such costs. *
* Revised.

EXHIBIT "J" TO AFFIDAVIT OF
JOHN H. JONES

COLORADO DEPARTMENT OF SOCIAL SERVICES
DIVISION OF PUBLIC WELFARE

1575 Sherman, Denver, Colorado 80203

TRANSMITTAL LETTER

Transmittal Letter No. 1033-C

Release Date: September 29, 1970

Release Authorization: Charline J. Birkins

Revision to the Staff Manual, Volume IV
Section 4313

Please make the change described below:

Remove page 4313-4312.12 and replace with the attached page having the same number.

Section 4313 is revised to include a rule in deductions. Some employed recipients, by claiming less dependdents for income tax purposes are able to retain their eligibility for assistance because their mandatory deductions are greater.

This rule change was approved by the Board in July and should ~~be~~ have been released at that time.

EXHIBIT "K" TO AFFIDAVIT OF
JOHN H. JONES

4313.13—Cont.

Effective: July, 1970

T.L. No. 1033-C

Supersedes: T.L. No. 1033-A

4313.13 * EMPLOYMENT INCOME

All earnings from employment of an ADC child who is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315. 3.

New wages from employment are income in the month received.

* Revised.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly or monthly pay—less mandatory deductions, such as for social security and federal and state taxes. *The number of exemptions for mandatory deductions from the payroll claimed by the applicant or recipient must be equal to the number of persons included in the AFDC grant.* (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances on earnings for AFDC cases.

For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, an allowance of $30 per month is made for such costs.

EXHIBIT "L" TO AFFIDAVIT OF
JOHN H. JONES

COLO. DIVSN. PUB. WELFARE
STAFF MANUAL — VOL. IV
PUBLIC ASSISTANCE
DETERMINATION OF NEED
CONSIDERATION OF INCOME
CASH INCOME

4313.13—Concl.
St. Bd. Approval: May 7, 1971
Effective: June 1, 1971
T.L. No. 1128
Supersedes T.L. No. 1033-C
4313.13 EMPLOYMENT INCOME.

All earnings from employment of an ADC child who

is a full-time or part-time student who is not employed full time are disregarded in determining the need of the family. For purposes of this section, a "student" is defined as a person attending a school, college, or university, or attending a course of vocational or technical training designed to fit him for gainful employment. "Full-time employment" is defined as 40 hours per week or the same number of hours as other persons in the same kind or place of work, if the normal work week is less than 40 hours. For the definition of unemployment for ADC-U, see 4232.61.

The other policies in this section are applicable to recipients of all categories and to ADC children not covered by the provisions in the preceding paragraph. For discussion concerning non-recipient spouses, in AND, AB, and OAP, see 4315.3.

New wages from employment are income in the month received.

In arriving at the amount to be considered as an income deduction, when the recipient is regularly employed, certain amounts are first subtracted from the recipient's net earnings. Net earnings are defined as the amount of the individual's daily, weekly, or monthly pay—less mandatory deductions such as for social security and federal and state taxes. The number of exemptions for mandatory deductions from the payroll claimed by the applicant or recipient must be equal to the number of persons included in the AFDC grant. (Payroll savings and other deductions optional with the employee are not included.) See 4313.131 for computations involved in additional allowances as earnings for AFDC cases.

For employment expenses such as transportation, spe-

cial clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, an allowance of $30 per month is made for such costs.

• For employment expenses incurred in the operation of a day care facility for children, an employment deduction is made in the amount of $50.00 for one child in care, and an additional $20.00 for each additional in care.•

• Issued.

EXHIBIT "M" TO AFFIDAVIT OF JOHN H. JONES

Department of Health, Education, and Welfare
Social and Rehabilitation Service
Washington, D.C. 20201

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL, SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

To: Regional Commissioner
Social and Rehabilitation Service
Department of Health, Education, and Welfare
Transmittal Number: 71-23
1. Program Identification: Assistance Payments Administration
2. Type of Action Submitted for Approval: Amendment
Effectve Date: As shown on attached
Federal Regulation Citation: 45 CFR 233
Number of the Plan Section or Attachment:
As set forth on attached Transmittals No. 1128 and 1152
Number of the Superseded Plan Section or Attachment:
As set forth on attached Transmittals No. 1128 and 1152
3. Governor's Review: Governor's Office Review not required.
See letter of 12/14/70
Signature of State Agency Official: CON F. SHEA, J.J.
Title: Executive Director
Date: December 8, 1971
Date Received in Regional Office: Dec. 14, 1971
Region: VIII
Signature of Regional Official: JAMES R. BURRESS
Title, Regional Commissioner
Date: 2/10/72
Remarks:
Recommended for Incorporation into the State's Approved Plan.
Return To:
Colorado State Department of Social Services
1575 Sherman St.
Denver, Colorado 80202

EXHIBIT "N" TO AFFIDAVITT OF JOHN H. JONES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs.

vs.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants.

Legal Services Office of El Paso County by Messrs. James W. Kin and Tom W. Armour, Attorneys at Law, 104 South Tejon, Suite 300, Colorado Springs, Colorado, for Plaintiffs; Mr. Duke W. Dunbar, Attorney General and Mr. John P. Moore, Deputy Attorney General by Messrs. Douglas D. Doane and Charles B. Lennahan, Special Assistant Attorneys General, 104 State Capitol, Denver, Colorado, for State defendants; Mr. Norman A. Palermo, Attorney at Law, Suite 602 Pikes Peak Building, Colorado Springs, Colorado, for defendant Pobanz.

MEMORANDUM OPINION

ARRAJ, Chief Judge.

Following our summary judgment in this case, defendants submitted a pleading denoted "Motion for a New Trial" and a request for a stay of execution to permit the court to examine "newly discovered evidence" in the

form of an amicus curiae brief submitted on behalf of the Secretary of Health, Education and Welfare (HEW) in a case similar to the present one. We allowed a temporary stay pending our reconsideration of this case and to consider the position of HEW. We have fully considered the additional facts and background presented by HEW and determine that they do not affect the legal conclusion we reached earlier.

The defendants seem to misunderstand the nature of the deference shown to HEW. If the question before us were whether a flat grant system would simplify and streamline the AFDC program, then we might well be persuaded that it would. Were we deciding the wisdom of creating a "consumption incentive" by not rewarding welfare recipients who cut down on their work-related expenses, our conclusion might be that this was not a wise policy. But these are not the questions before this court; we are asked to interpret § 402(a)(7) of the Social Security Act, 42 U.S.C. § 602(a)(7).

As we noted earlier, Congress enacted § 402(a)(7) to remove the disincentive to work caused by the increased expenses resulting from most jobs. We should keep in mind that when this amendment was passed, it was the only income disregard provision of general application. (Certain stipends paid in connection with job-training programs were being disregarded.) It was not until several years later that § 402(a)(8) created positive incentives to work by providing that the first $30 per month plus 1/3 of the remainder shall be disregarded in determining need.

It may well be that § 402(a)(7) is an anacronism and that it would be better simply to increase the incen-

tive under § 402(a)(8) by another $30, say, which is approximately the effect of Colorado's Section 4313.13 provision. Congress has not chosen to do this, and no amount of deference to HEW's technical knowledge and administrative experience would justify our rewriting the enactment or contorting its meaning.

A comparison of the cases of *King v. Smith,* 392 U.S. 309 (1968) and *Lewis v. Martin,* 397 U.S. 552 (1970) demonstrates the kind of deference courts should show to HEW. Both cases voided state regulations which would have considered the income of "substitute fathers" or of "men assuming the role of a spouse" in determining need, as violative of the Social Security Act. When *King v. Smith,* was decided, HEW generally approved state programs containing a "man-in-the-house" provision. *King v. Smith, supra* at 334 (Douglas, J., concurring). The particular Alabama regulation involved had not been sanctioned by HEW because of its unique provision that a man cohabiting or having frequent sex relations with a dependent child's mother outside the mother and child's home could be considered a "substitute father." The Court did not adopt the HEW position, but went further, concluding that no "substitute father's" income could be considered unless he was legally obligated to support the child. HEW devised its regulations to conform to this decision, adding a provision that a stepfather's income would not be considered unless he was "legally obligated to support the child under State law of general applicability which required stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children." *Lewis v. Martin* upheld this regulation because HEW could "reasonably conclude that an obligation to support under state law must be of 'general applicability' to make that obligation

in reality a solid assumption on which estimates of funds actually available to children on a regular basis may be calculated." 397 U.S. at 558-559. The Court did not want state law to become a device for lowering welfare costs without guaranteeing the child would actually regularly receive the income of the stepparent. Thus it can be seen that a position taken by HEW based simply on its own interpretation of a statutory enactment does not receive the same deference as a HEW position based on HEW's factual understanding of the realities of the program it administers. *Cf. Torres v. New York State Department of Labor,* 321 F. Supp. 432 (S.D.N.Y. 1971), vacated 402 U.S. 968. We would show deference to HEW's factual conclusions that a flat grant may be a more efficient way to deal with work expenses but we cannot agree with its legal conclusion that § 402 (a)(7) allows this.

The HEW amicus brief describes the process it would require states to go through in order to arrive at a figure which would take expenses "fully into account."

> . . . [A]s a starting point in justifying its flat amount of $35 for work expenses . . . Georgia must identify exactly what items of work expenses are being covered, and on what basis . . .
>
> Once the items have been identified, the much harder job is to show that they have been fairly priced and fairly averaged. The averaging itself may be quite intricate mathematically, but it can be accomplished readily by those who have the requisite competence, provided the data are available on how many individuals had what work expense at what monthly cost. The real problem is to gather the data.
>
> For the agency to conduct an interview in depth

with each recipient who works, and thus determine the exact work expense, and repeat this process over many months to reflect seasonal variations, would yield accurate information, but would be wasteful of time, staff and money. Statistical sampling techniques can yield sufficiently valid results that the State already has information in its case records [sic.], the sampling can be facilitated by using the case records rather than interviews. Nevertheless, under the current HEW practice, a State that wishes to use a flat amount must validate it by accepted techniques of one kind or another.

. . . [C]urrent costs of work expense items . . . could be [ascertained] by interviewing a cross-section of cases. Alternatively, the State could analyze a sample of its case records for periods prior to May, 1969, when the State recognized work expenses on an individualized basis. The costs thereby determined would of course have to be updated to reflect increases in cost levels since the period surveyed. . . .

[A flat amount] must be supported by vigorous justification on an adequate objective basis. . . .

We cannot believe Congress intended to force states to go through such an elaborate process in order to arrive at an approximation. Rather, Congress insisted expenses be taken "fully" into account in order that no recipient would suffer under a disincentive to work, since at that time there were not the positive incentives that now exist.

In conclusion, it should be understood that we are expressing no opinion whatsoever as to whether the work expenses claimed by Mrs.Vialpando are or are not reasonably related to her employment. We hold only that

Colorado may not use a flat amount for work expenses and deny Mrs. Vialpando credit on that basis.

For the reasons herein given, defendants' motion for a new trial is denied.

DATED at Denver, Colorado, this 9th day of March, 1972.

BY THE COURT:
ALFRED A. ARRAJ,
Chief Judge
United States District Court

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Region VIII
Federal Office Building
19th and Stout Streets
Denver, Colorado 80202

May 15, 1972

Social and Rehabilitation Service

ASSISTANCE PAYMENTS
REGIONAL MEMORANDUM NUMBER 12

Subject: Standard Allowance for Expenses Reasonably Attributable to Earning of Income

To: State Welfare Directors
Region VIII

1. The 1962 Amendments to the Social Security Act amended the Act to provide that in determining need the State agency shall take into consideration any expenses reasonably attributable to the earning of any such income. Welfare Administration, Bureau of Family Services, State Letter No. 674 attached the publication titled "Public Assistance 1962." It states as follows: "Other work incentives were offered through provisions that . . . require taking into account necessary expenses that can be reasonably attributable to the earning of income in determining need under all the Federally aided assistance programs."

2. In accordance with 45 CFR 233.20(a)(3)(iv), a State plan must provide that income equal to expenses reasonably attributable to the earning of income will not be included as income. Under 45 CFR 233.20(a)(6)(iv), earned income means the total amount, irrespective of

personal expenses, such as income tax deductions, lunches and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers. 45 CFR 233.20(a)(7)(i) also requires the plan to provide as part of the method for disregarding earned income, that all work expenses, personal and non-personal, will be deducted. SRS unnumbered State Letter of September 26, 1969, recognizes that "for State agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables (for use in applying the disregard) may be further adjusted as demonstrated below."

3 . Acordingly, it is clear under the Federal policy that State agencies must, as a minimum, consider those items of work expenses identified in 45 CFR 233.20(a)(6)(iv), namely, mandatory payroll deductions, lunches, transportation to and from work, tools, materials and special uniforms and child care costs incurred because of the employment.

4. HEW has accepted State proposals to use a flat amount for expenses attributable to earning of income (other than child care expenses), *where there has been a factual justification of the reasonableness of the flat amount,* as being consistent with the Federal requirements for simple and efficient program administration, and as resulting in an equitable and uniformly administered program. This is also consonant with the requirement in 45 CFR 233.20(a)(1) that States determine need and the amount of assistance for all applicants and recipients on an objective and equitable basis.

5. *Individualization of expenses is also acceptable under Federal policy. The use of a justified flat amount for some items, rather than all items, is also acceptable.* For example, State agencies have developed justified flat amounts for all expenses other than mandatory payroll deductions and child care (which costs are recognized on an individual basis). There are other intermediate combinations. Individualization of expenses up to *a maximum is not acceptable,* because most recipients would not be treated equitably and uniformly under such a method.

JOHN P. SKILLERN
Acting Associate
Regional Commissioner
Assistance Payments

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Nos. 72-1218 and 72-1345 — January 1973 Term

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiff-Appellee.

vs.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants-Appellants.

Appeal from the United States District Court
for the District of Colorado
(DC-C-2449)

[Filed Mar. 22, 1973]

Charles B. Lennahan, Special Assistant Attorney General, Denver, Colorado (Duke W. Dunbar, Attorney General, John P. Moore, Deputy Attorney General, and Douglas D. Doane, Special Assistant Attorney General, Denver, Colorado, with him on the brief) for Appellants, except Melvin Pobanz.

James W. Kin, El Paso County Legal Services Office, Colorado Springs, Colorado, (Tom W. Armour, El Paso County Legal Services Office, Colorado Springs, Colorado, and Kenneth Neiman, Steven J. Cole and Henry A. Freedman, N.L.S.P., Center on Social Welfare Policy

and Law, New York, New York, of Counsel, with him on the brief) for Appellees.

Before LEWIS, Chief Judge; PICKETT and McWILLIAMS, Circuit Judges.

LEWIS, Chief Judge.

In its present posture, this is a private action brought by appellees, Colorado welfare recipients, against state officials administering the Colorado welfare program. The appeal is from a judgment requiring appellants to implement a modification of the Colorado Division of Public Welfare Manual, § 4313.13 to comply with 42 U.S.C. § 602(a)(7) in determining a family's need under the Aid to Families with Dependent Children (AFDC) program. No party raises any question concerning the nature of the relief granted below.

The AFDC program is financed largely by the federal government on a matching fund basis and is administered by the states. An AFDC grant is computed by comparing a family's income and resources to a standard of need statistically determined by the state. The family income used in this comparison is gross family income less certain exclusions mandated by 42 U.S.C. § 602(a)(7), an employment expense provision, and 42 U.S.C. § 602(a)(8), an income disregard provision. On July 1, 1970 the Colorado Board of Social Services promulgated section 4313.13 of the Colorado Division of Public Welfare Manual. This regulation limits employment expenses under 42 U.S.C. § 602(a)(7) to a standardized $30 figure plus mandatory payroll deductions and child care expenses. The $30 standardized figure is an average based on a statistical survey and is meant to cover "employment expenses such as transportation, special clothing, union

dues, special education or training costs, telephone, additional food or personal needs. . . ." The Colorado method of treating employment expenses embodied in section 4313.13 was approved by the Department of Health, Education and Welfare.

Prior to the effective date of section 4313.13, Colorado excluded from family income all expenses reasonably attributable to the earning of such income. The effect of the new regulation which allows only a standardized exclusion for employment expenses other than mandatory payroll deductions and child care expenses was to reduce appellees' excludible [sic] employment expenses to such an extent that their net income after the exclusions was greater than Colorado's standard of need. As a consequence, appellees were ineligible for AFDC grants and they initiated this action seeking damages and declaratory and injunctive relief. The district court held that the standardization of employment expenses in the new Colorado regulation did not comply with 42 U.S.C. § 602(a)(7) and granted the relief sought.

42 U.S.C. § 602(a)(7) requires that a state AFDC plan must "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as *any* expenses reasonably attributable to the earning of any such income." (Emphasis added.) We interpret the words "any expenses" to mean all actual expenses. Thus 42 U.S.C. § 602(a)(7) requires the states to consider all actual expenses reasonably attributable to the earning of income in determining need. *See* Amos v. Engleman, D.N.J. 333 F. Supp. 1109, 1119 (three-judge court); *modified on*

other grounds, 404 U.S. 23. This interpretation is consistent with the congressional intent that the states should "take these [employment] expenses *fully* into account." S. Rep. No. 1589, 87 Cong., 2d Sess., 1962 U.S. Code Cong. & Ad. News 1943, 1960 (emphasis added). The use of a standardized employment expense exclusion does not take into consideration all actual expenses when a family's expenses exceed the standardized allowance. *CF* Amos v. Engleman, *supra.* In the instant case the appellees' actual employment expenses consistently exceeded the $30.00 standard exclusion. Consequently, Colorado's application of the standardized allowance in determining the appellees' needs does not comply with 42 U.S.C. § 602(a)(7). Campagnuolo v. White, D. Conn., Civil No. 13968; Adams v. Parham, N.D. Ga., Civil No. 16041.

The appellants maintain that the words "take into consideration" in 42 U.S.C. § 602(a)(7) sanction the use of a standardized employment expense exclusion in determining need in all cases. Their reasoning is that these words do not dictate a specified method for treating employment expenses and that the use of a standardized allowance is one acceptable way of taking into consideration expense of employment. The phrase "take into consideration" is flexible and by itself does not require a particular treatment of employment expenses. However, when considered in the statutory framework of 42 U.S.C. § 602(a)(7), these words assume a particular meaning. It should be noted that the phrase "take into consideration" modifes both "income" and "expenses." Consequently, Congress intended employment expenses to be

treated in the same manner as income.[1] Since consideration of each family's income must necessarily be based on actual rather than average figures, expenses attributable to the earning of such income must be taken into consideration in the same manner.

Appellants also contend that the Supreme Court in Rosado v. Wyman, 397 U.S. 397, approved the principle underlying the use of a standardized employment expense allowance. The Rosado case involved 42 U.S.C. § 602(a)(23) and sanctioned the use of statistical averages in computing a standard of need to be applied in the states' administration of their AFDC programs.[2] The Supreme Court has continually stressed the states' "undisputed power" to determine this standard of need. King v. Smith, 392 U.S. 309, 334; Dandridge v. Williams, 397 U.S. 471, 478. Congress itself did not encroach upon this undisputed power until the passage of 42 U.S.C. § 602(a)(23) in 1967.[3] Nevertheless, 42 U.S.C. § 602(a)(7) is indicative of congressional reluctance to give the states the same unfettered discretion to determine the needs of a particular family. Thus, Supreme Court approval of the use of statistical averages in determining the standard of need is

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[1] When considering the 1962 amendment which added the employment expenses provision, Congress specifically recognized that "all income of recipients . . . is taken into account . . . in determining need." S. Rep. No. 1589, 87 Cong., 2d Sess., 1962 U.S. Code Cong., & Ad. News 1943, 1959. (Emphasis added.) Thus Congress intended that all employment expenses also be considered. See 45 C.F.R. § 233-20 (a)(7)(i).

[2] In **Rosado** the Court said: "We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages. . . . Providing all factors . . . are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with [42 U.S.C. § 602(a)(23)] redefine its method for determining need. . . . New York is not foreclosed from accountng for basic and recurring items of need . . . by an averaging system." Rosado v. Wyman, 397 U.S 397, 419-20.

[3] 42 U.S.C. § 602(a)(23) required the states to adjust their standards of need by July 1, 1969 in order to reflect cost of living increases.

not a mandate for judicial approval of such averaging in determining the needs of a particular family under 42 U.S.C. § 602(a)(7). *But see* Amos v. Engleman, D. N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23.

Additionally, an understanding of the manner in which a state's standard of need and the computation of a particular family's available income and resources under 42 U.S.C. § 602(a)(7) complement each other illustrates the incongruity of Colorado's standardized employment expenses allowance in the instant case. The standard of need is a dollar amount representing the costs of those items which a state has determined to be necessary to maintain a hypothetical family at a subsistence level. Such an estimate by its nature is susceptible to computation through the use of statistical averages and it was thus fitting for the Supreme Court to approve the use of an averaging system in *Rosado.* A state must compare its standard of need to the income and resources actually available to the particular family in order to establish financial eligibility and the amount of an AFDC grant. 45 C.F.R. § 233.20(a)(3)(ii)(a) and (c). 42 U.S.C. § 602(a)(7) requires that the computation of income and resources available to the particular family must take into consideration any expenses reasonably attributable to the earning of income. To uniformly apply a standardized employment expense allowance rather than consider actual expenses in this computation would render meaningless the process of comparing a particular family's available income and resources with a hypothetical family's standard of need.

The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence

to this standard when a particular family's expenses of employment exceed the allowance. In such cases, Colorado's standard allowance operates as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. § 602(a)(7). Williford v. Laupheimer, E.D. Penn., 311 F. Supp. 720 (three-judge court). Nevertheless, a reasonable interpretation of the statute permits "a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, *provided the allowance is adequate to cover all actual expenses.*" Amos v. Engleman, D.N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23. (Emphasis added.)

Our interpretation of 42 U.S.C. § 602(a)(7) is consistent with the statutory history and the explicit congressional purpose of providing AFDC families with an incentive to seek employment. S. Rep. No. 1589, 87 Cong. 2d Sess., 1962 U.S. Code Cong. & Ad. News 1943, 1960. Although appellants present numerous policy reasons for a different result, it is not within our realm to legislate social policy. Jefferson v. Hackney, 406 U.S. 535, 541; Dandridge v. Williams, 397 U.S. 471, 487; Rosado v. Wyman, 397 U.S. 397, 422. One specific policy argument deserving comment even in the context of our limited role is the appellants' contention that our decision will compel states to consider unnecessary expenditures. Such fears should be allayed by the statute itself which requires that the subject expenses be reasonably attributable to the earning of income.

Appellants emphasize the approval of section 4313.13 of the Colorado Division of Public Welfare Manual by the Department of Health, Education and Welfare and maintain that this approval should be accorded substantial

weight as a statutory interpretation by the department responsible for the administration of the Social Security Act. This principle, however, is inapplicable when a departmental interpretation is inconsistent with the controlling statute. Townsend v. Swank, 404 U.S. 282, 286. Equally without merit is appellants' contention that under 42 U.S.C. § 604(a)(2) states need only substantially comply with federal statutory requirements. *See* Rosado v. Wyman, 397 U.S. 397, 408; King v. Smith, 392 U.S. 309, 316-17. 42 U.S.C. § 604(a)(2) provides an administrative procedure whereby the Secretary of Health, Education and Welfare may cease funding state programs in order to compel substantial compliance with federal statutory requirements. This statute is inapposite in suits by prospective recipients against state agencies responsible for the administration of the AFDC program.

Affirmed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners.

v.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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INDEX

PAGE

STATEMENT 1

OPINIONS BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 2

STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 8

I. THE DECISIONS BELOW CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT 8

A. This Court Has Held That the Agency Interpretation of the Social Security Act is Entitled to Great Weight 8

B. The Secretary Must Harmonize Several Provisions of the Social Security Act in Determining Whether or Not to Approve a State Plan Which Utilizes a Standardized Work Expense Allowance 9

1. The Requirement for a Statewide Program 9

2. The Requirement for Efficient Administration 9

3. The Requirement for Prompt Assistance 10

4. The States Have Considerable Latitude in Allocating Funds Available for Welfare Purposes 10

INDEX — (Continued)

PAGE

C. The Secretary in Harmonizing the Foregoing Provisions Has Consistently Approved the Use of Standardized Work Expense Allowances Since 1957 11

D. Conclusion 12

II. THE OPINIONS OF THE COURTS BELOW SERIOUSLY HINDER THE EFFECTIVE ADMINISTRATION OF THE SOCIAL SECURITY ACT 13

III. CONCLUSION 15

APPENDICES

APPENDIX A, Opinion of the United States Court of Appeals, Tenth Circuit, March 22, 1973 ..... Appendix A-1

APPENDIX B, Memorandum Opinion of the United States District Court of the District of Colorado, March 9, 1972 ..... Appendix B-1

APPENDIX C, Judgment filed in the United States District Court for the District of Colorado, February 17, 1972 ..... Appendix C-1

APPENDIX D, Memorandum Opinion and Order of the United States District Court for the District of Colorado, January 13, 1972 ..... Appendix D-1

APPENDIX E, Section 3140 of the Handbook of Public Assistance Administration (3/11/57) ..... Appendix E-1

PAGE

APPENDIX F, Section 3140 of the Handbook of Public Assistance Administration (4/22/64) ..... Appendix F-1

APPENDIX G, Letter dated September 26, 1969 from Department of Health, Education and Welfare to State Agencies Administering Approved Public Assistance Plans ..... Appendix G-1

APPENDIX H, Assistance Payments Regional Memorandum Number 12, dated May 15, 1972 ..... Appendix H-1

CASES

Anderson v. Graham, Civil Action No. CR 72-L-176, D. Nebr., decided April 4, 1973 14

Adams v. Parham, Civil Action No. 16041 (N.D. Ga. filed April 14, 1972) 12, 13, 14

Campagnuolo v. White, Civil Action No. 13968 (D. Conn. filed June 22, 1972) 14

Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare, 448 F. 2d 209 (2d Cir. 1971) 14

Conover v. Hall, 104 Cal. Reptr., 77 (Cal. App. 1972) 13

County of Alameda v. California, 97 Calif. Reptr. 385, 5 Cal. 3d 730, 488 P. 2d 953, (1971), Appeal Dismissed 406 U.S. 913 (1972) 14

Dandridge v. Williams, 397 U.S. 471 (1970) 10

INDEX — (Continued)

PAGE

Engleman v. Amos,
333 F. Supp. 1109 (D.N.J. 1970) modified on other grounds 404 U.S. 23 (1971) 14

Ginsburg and Sons v. ~~Dumlin~~, *Popkin*
285 U.S. 204 (1932) 9

Jefferson v. Hackney,
406 U.S. 435 (1972) 10

King v. Smith,
392 U.S. 309 (1968) 10

Lewis v. Martin,
397 U.S. 552, 559 (1970) 9

Michigan Welfare Rights Organization v. Houston,
Civil Action No. 34529 (E.D. Mich. filed April 30, 1971) 14

Rosado v. Wyman,
397 U.S. 397 (1970) 6, 10

Schlude v. Commissioner,
372 U.S. 128, 130 (1963) 13

Udall v. Tallman,
380 U.S. 1 (1965) 9

United States v. City of Chicago,
400 U.S. 8 (1970) 9

United States v. Frazer,
297 F. Supp. 319 (M.D. Ala. N.D. 1968)
317 F. Supp. 1079 (M.D. Ala. N.D. 1970) 12

Williford v. Laupheimer,
311 F. Supp. 720 (E.D. Pa. 1969) 14

INDEX — (Continued)

PAGE

STATUTES

28 United States Code

§ 1254(1) 2
§ 1343(3) and (4) 8
§ 2101(c) 2

42 United States Code

§ 601 ..... 3, 10
§ 602 ..... 3, 7
§ 602(a)(1) 9
§ 602(a)(5) 9
§ 602(a)(7) 6, 10, 11
§ 602(a)(10) 10
§ 632(b)(2) and (3) 5
§ 1302 ..... 5, 9
§ 1343(3) and (4) 8
§ 1983 8

Public Law 87-543, § 106(b) 11

REGULATIONS

38 Federal Register 8743 (1973) 10, 14
33 Federal Register 10230 ..... 11, 12
34 Federal Register 1394 12

MISCELLANEOUS

Handbook of Public Assistance Administration 11, 12

RULES

Colorado Division of Public Welfare Staff Manual
Rule 4313.13 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners.

v.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

STATEMENT

The petitioners, Con F. Shea, et al, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on March 22, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The two opinions, not yet reported of the United States District Court for the

District of Colorado, and the judgment rendered by that Court also appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on March 22 1972. This petition for certiorari was filed within 90 days of that date. No motion for rehearing was filed. This Court's jurisdiction is invoked under 28 US.C. §§ 1254(1) and 2101(c). On April 13, 1973, the Court of Appeals entered an order staying the issuance of its mandate until May 12, 1973, to allow time for appellants to file a petition for a writ of certiorari.

QUESTIONS PRESENTED

1. Whether, in the administration of the Aid to Families with Dependent Children (AFDC) program, the use of a standardized statistically based work expense allowance, as described in Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual, violates Title IV of the Social Security Act when read as a whole or whether such an allowance is a permissible method to be used to "take into consideration" any such work expenses and determine their reasonableness.

2. Whether the decisions below in this case conflict with the decisions of this Court regarding (a) the weight to be given to administrative interpretations by the responsible federal agency and (b) the scope of the discretion of the secretary of an executive department.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 42:

"§601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

§602 State plans for aid and services to needy families with children; contents; aproval by secretary

(a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; . . . (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis except that the

Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; and . . . (7) except as may be otherwise provided in clause(8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; (8) provide that, in making the determination under clause (7), the State agency—

(A) shall with respect to any month disregard—

(ii) in the case of earned income of a dependent child not included under clause (1), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination the first $30.00 of the total of such earned

income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b) (2) and (3) of this title); . . .

• • •

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals. . .

§1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

STATEMENT OF THE CASE

The petitioners, Con F. Shea, et al., are responsible for the administration of the public assistance and social services programs in Colorado. The respondents, Ascension Vialpando, et al., were, at various times, applicants and recipients under the Aid to Families with Dependent Children (AFDC) program in Colorado.

Eligibility or continued eligibility for AFDC benefits

is, to a large degree, determined by the need of the applicant or recipient. The AFDC program is more fully described in *King v. Smith,* 392 U.S. 309 (1968), and *Rosado v. Wyman,* 397 U.S. 397 (1970).

In general, need is determined by comparing the applicant's or recipient's net income[1] to the state's standard of need.[2]

Under the Social Security Act, a state plan for Aid to Families with Dependent Children must, inter alia, "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as any expenses reasonably attributable to the earning of any such income. . ." 42 U.S.C. §602(a)(7).

Prior to July of 1970, the Colorado regulations governing the Aid to Families with Dependent Children program provided a work expense allowance which included, but was not limited to, the actual cost of transportation, within certain limits. This included "purchase, repair, or upkeep of a vehicle, providing it is essential to retain employment and the plan therefore is approved by the county department." The policy was changed in May of 1970 to a maximum transportation work expense allowance of either $30 per month, if a car was needed to get

[1] Briefly, the computational sequence is as follows:

Gross Income
Less work incentive ($30 + 1/3 of the balance)
Sub Total
Less mandatory payroll deductions
Sub Total
Less allowable work expenses
Net Income

[2] The states have the option of comparing net income to percentage of the standard of need if insufficient funds are appropriated to pay 100% of the standard of need. The concept of standard of need is more fully described in **Rosado v. Wyman, supra.**

to or from work, or the actual expenses of public transportation. In July of 1970, the Colorado work expense allowance regulation was changed so that it consisted of (1) mandatory payroll deductions, plus (2) child care expenses, plus (3) $30. The $30 figure was based upon a statistical analysis of a statewide survey of actual work expenses.

The change in the state regulation in July of 1970 was considered to be consistent with the Social Security Act for several reasons. (These reasons are summarized and discussed more fully, with citations, in later sections of this petition). The change was approved by the United States Department of Health, Education, and Welfare (HEW). The method for taking work expenses into consideration and determining their reasonableness is not specified in either the Social Security Act or the federal regulations. The figure of $30 per month was based upon a statistical analysis of all actual work expenses of persons in the Aid to Families with Dependent Children program. The Social Security Act, when read as a whole, makes many requirements which must be reconciled. The program must be statewide. It should be efficiently administered. Error in administration should be minimized. The state is to administer the program to provide assistance and services "as far as practicable" to eligible persons. In *Rosado v. Wyman, supra,* the court approved the use of standardized amounts in another subsection of 42 U.S.C. §602. The long standing administrative interpretation of HEW has been to permit the use of standardized work expense allowances for some items of work expenses.

Prior to and after July of 1970, Mrs. Vialpando had a 1968 Volkswagen. Prior to July of 1970, the county department allowed her a work expense allowance which

included $47.30 per month for mileage and $63.81 for payments on the car.

The dispute in this case arose when the amended work expense allowance was applied to Mrs. Vialpando's case. Since the $30 statistically based standard allowance was less than the $47.30 in mileage plus $63.81 in car payments which she was previously allowed, her net income was increased above the standard of need and she was found to be ineligible for AFDC. The question of whether or not $30 is sufficient is not in question, the issue is whether or not the use of a standardized work expense allowance is permissible.

Mrs. Vialpando, and others, filed suit for injunction and declaratory relief under 42 U.S.C. §1983 on or about July 27, 1970, in the United States District Court for the District of Colorado. Jurisdiction was asserted under 28 U.S.C. §§1343(3) and (4), 2201 and 2202.

REASONS FOR GRANTING THE WRIT

I. THE DECISIONS BELOW CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

A. *This Court Has Held that the Agency Interpretation of the Social Security Act is Entitled to Great Weight.*

Congress and this Court have firmly established that the Secretary of a federal executive agency has considerable discretion and statutory interpretations by such agencies are entitled to great weight. "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by

the officers or agency charged with its administration." *Udall v. Tallman,* 380 U.S. 1 (1965), *Lewis v. Martin,* 397 U.S. 552, 559 (1970), *United States v. City of Chicago,* 400 U.S. 8 (1970).

The Secretary of the United States Department of Health, Education, and Welfare (referred to hereafter as the "Secretary") has broad discretion. 42 U.S.C. §1302.

B. *The Secretary Must Harmonize Several Provisions of the Social Security Act in Determining Whether or Not to Approve a State Plan which Utilizes a Standardized Work Expense Allowance.*

The Social Security Act must be read as a whole. See *Ginsburg and Sons v. Popkin,* 285 U.S. 204 (1932). In this case, the Social Security Act creates several requirements which must be reconciled by the Secretary or his designee. *Udall v. Tallman,* supra at 9.

1. *The Requirement for a Statewide Program*:

The Secretary must ensure that an AFDC state plan will provide that the program will be in effect in all political subdivisions of the state. 42 U.S.C. §602(a)(1). This requirement carries with it a mandate for uniformity throughout the state which is not possible with subjective item by item determination of whether or not a particular expenditure by an individual was reasonably attributable to the earning of income.

2. *The Requirement for Efficient Administration*:

Under 42 U.S. §602(a)(5) a state plan must provide for "such methods of administration . . . as are found by

the Secretary to be necessary for the proper and efficient operation of the plan . . ." The use of a standardized work expense allowance reduces administrative costs and errors[3] in determining eligibility.

3. *The Requirement for Prompt Assistance*:

Assistance must be provided with "reasonable promptness to all eligible individuals." 42 U.S.C. §602(a)(10). The delays inherent in item by item consideration of work expenses can be avoided by using a standardized allowance.

4. *The States have Considerable Latitude in Allocating Funds Available for Welfare Purposes*:

The States are only required to furnish financial assistance and rehabilitation and other services "as far as practicable." 42 U.S.C. §601.

The subsection in question, 42 U.S.C. §602(a)(7), requires that a state "take into consideration" certain work expenses and determine whether they are "reasonably attributable" to the earning of income. The statute does not prescribe a method for either taking work expenses into consideration or determining their reasonableness. This Court has recognized the need for allowing the states considerable latitude in allocating the funds available for welfare purposes. *King v. Smith,* supra *Dandridge v. Williams,* 397 U.S. 471 (1970), and *Jefferson v. Hackney,* 406 U.S. 435 (1972). The use of a statewide standard of need permitted by this court in *Rosado*

[3] New federal regulations have been published which will impose financial penalties upon the states for errors in eligibility determinations. 38 Fed. Reg. 8743 (1973) The new regulations impose extremely strict requirements for "zero error." A standardized work expense allowance would be necessary if errors are to be avoided.

v. Wyman, supra, is not legally distinguishable from the use of a standard work expense allowance based upon a statistical analysis of all actual work expenses.

C. *The Secretary in Harmonizing the Foregoing Provisions has Consistently Approved the Use of Standardized Work Expense Allowances Since 1957.*

State Letter 291, dated March 11, 1957, was sent "TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS," by the Social Security Administration of HEW. It transmitted various new pages for the *Handbook of Public Assistance Administration* (hereafter referred to as the "Handbook"), including Section 3140 "Specific Applications — Income and Resources 1, Employment Expenses." This regulation permitted a flat work expense allowance for food, clothes, and personal incidentals. (A copy of the relevant parts of Section 3140 has been included in the Appendix hereto).

On July 25, 1962, 42 U.S.C. §602(a)(7) was amended by Section 106(b) Public Law 87-543 to provide for taking work expenses into consideration.

On April 22, 1964, the *Handbook of Public Assistance Administration* was amended. The amended *Handbook* reaffirmed the use of standardized work expense allowances for food, clothing, and personal incidentals. (A copy of the relevant parts of Section 3140 of the *Handbook* as amended has been included in the Appendix hereto).

On July 17, 1968, with the approval of Secretary Wilbur J. Cohen, Interim Policy Statement No. 4 was published. (33 Federal Register 10230). It required the dis-

regard of income equal to expenses reasonably attributable to the earning of income. It replaced Section 3140 of the *Handbook*. However, the *Handbook* provisions are still used to interpret the federal regulations and the Social Security Act.

The new regulations reflecting the comments received on Interim Policy No. 4 (33 Federal Register 10230) were published on January 29, 1969 (34 Federal Register 1394).

On September 26, 1969, HEW sent a letter "To State Agencies Administering Approved Public Assistance Plans." This letter approved of standardized work expense allowances and provided tables for applying such allowances. (A copy of the letter of September 20, 1969 has been included in the Appendix hereto, less tables).

In 1970, HEW approved Colorado's $30 statistically based standard work expense allowance, which became effective in July of 1970.

The Brief of the United States as Amicus Curiae filed in *Adams v. Parham,* Civil Action No. 16041 (N.D. Ga. filed April 14, 1972) described the Secretary's interpretation of the Social Security Act which permitted the use of standardized work expense allowances.

D. *Conclusion.*

The Social Security Act, the implementing regulations, and particularly the State letters are addressed to the States. Recipients do not file direct claims against HEW under these regulations. The HEW State letters are statements of the Secretary's criteria for approval of state plans. See *United States v. Frazer,* 297 F. Supp.

319 (M.D. Ala. N.D. 1968); 317 F. Supp. 1079 (M.D. Ala. N.D. 1970).

The regulations, State letters and Brief of the United States as Amicus Curiae in *Adams v. Parham* indicate that the Secretary has exercised his broad discretion and interpreted the Social Security Act to permit the use of standardized work expense allowances.

In view of the foregoing, the petitioners submit that the Court of Appeals and the District Court miscontrued, misapplied, or misconceived the applicable decisions of this Court and, in effect, ignored the Secretary's interpretation and refused to recognize the Secretary's discretionary powers. Accordingly, the pending petition for a writ of certiorari should be granted. *Schlude v. Commissioner*, 372 U.S. 128, 130 (1963).

II. THE OPINIONS OF THE COURTS BELOW SERIOUSLY HINDER THE EFFECTIVE ADMINISTRATION OF THE SOCIAL SECURITY ACT.

Apart from the lower court decisions in this case, a considerable body of lower court case law has developed in related cases. The overall effect of these decisions is to seriously hinder the effective administration of the Social Security Act.

Some of these courts have ruled in favor of standardized work expenses allowances.[4] Others have not.[5]

[4] The Califorina Court of Appeal for the Third Appellate District on November 13, 1972, reversed the trial courts' order granting a preliminary injunction against the enforcement of the provisions of Sec. 11451.6 of the Welfare and Institutions Code. The cited statute provided for a fifty dollar per month work expense allowance, plus reasonable and necessary costs of child care. On January 17, 1973, the California Supreme Court granted a hearing. **Conover v. Hall, 104 Cal. Reptr. 77 (Cal. App. 1972)**, hearing granted January 17, 1973.

The fact that issues in this case or similar issues have been presented to a substantial number of courts with varying results indicates the importance of the questions and the difficulty which state directors of public welfare have in determining what is permissible under the Social Security Act. The Circuit Court opinion in this case can be interpreted to mean that the states cannot rely upon instructions and interpretations from HEW.

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[4] continued

In the form of dicta, a three judge federal district court approved New Jersey's fifty dollar per month work expense allowance and said that "if a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses." The issue was not presented to the U.S. Supreme Court. **Engleman v. Amos,** 333 F. Supp. 1109 (D.N.J. 1970), modified on other grounds. 404 U.S. 23 (1971).

The U.S. District Court for the Eastern District of Michigan approved a settlement approved by the U.S. Department of Health, Education and Welfare which included at $40.00 maximum work expense allowance. **Michigan Welfare Rights Organization v. Houston,** Civil Action No. 34529 (E.D. Mich. filed April 30, 1971).

[5] In **Adams v. Parham,** supra, a single District Court judge held that a $35 per month flat work expense allowance was invalid. The Court ruled upon the District Court decision in the present case and upon **Williford v. Laupheimer,** infra.

In **Campagnuolo v. White,** Civil Action No. 13968 (D. Conn. filed June 22, 1972) a single federal district judge held that a $60 per month flat work expense allowance for full time employment and a $40 per month allowance for the expenses resulting from part time employment were invalid if recipients were not allowed to prove and deduct actual expenses in excess of the flat amounts.

The Second Circuit has held that the state could not limit the types of work expenses to mandatory payroll deductions and child care expenses. **Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare,** 448 F. 2d 209 (2d Cir. 1971).

County of Alameda v. California, 97 Cal. Reptr. 385, 5 Cal. 3d 730, 488 P.2d 953, (1971), Appeal Dismissed 406 U.S. 913 (1972), involved state work expense allowance regulations which provided for standard deductions ranging from $6 to $25 per month. The California Supreme Court invalidated the regulation. The frequently cited case of **Williford v. Laupheimer,** 311 F. Supp. 720 (E.D. Pa. 1969) involved a maximum, rather than a statistically based flat grant. Accordingly it is distinguishable. New federal regulations have been published which will impose financial penalties upon the states for errors in eligibility determinations. 38 Fed. Reg. 8743 (1973). The new regulations impose extremely strict requirements for "zero error." A standardized work expense allowance would be necessary if errors are to be avoided.

In **Anderson v. Graham,** Civil Action No. CV 72-L-176 (D. Nebraska ~~filed~~ decided April 6, 1973) the Court invalidated the Nebraska $25 standard work expense allowance.

III. CONCLUSION

The Court of Appeals' decision is in conflict with applicable decisions of this Court. The states are constantly faced with the question whether to follow instructions from HEW (and risk being sued by recipients) or not following such instructions (and risk losing federal funds). This Court has been rather uniform in upholding instructions from the responsible federal agency in the latter context. In this case, this Court is being asked to resolve the substantial federal question of whether welfare recipients can successfully sue a state when the state is acting within its own broad discretion and is using a method approved by HEW to comply with the Social Security Act.

For the reasons set forth in this petition a writ of certiorari should issue to review the judgment and opinion of the Tenth Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Nos. 72-1218 and 72-1345 — January 1973 Term

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiff-Appellee

v.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants-Appellants

Appeal from the United States District Court
for the District of Colorado
(DC-C-2449)

[Filed Mar. 22, 1973]

Charles B. Lennahan, Special Assistant Attorney General, Denver, Colorado (Duke W. Dunbar, Attorney General, John P. Moore, Deputy Attorney General, and Douglas D. Doane, Special Assistant Attorney General, Denver, Colorado, with him on the brief) for Appellants, except Melvin Pobanz.

James W. Kin, El Paso County Legal Services Office, Colorado Springs, Colorado, (Tom W. Armour, El Paso County Legal Services Office, Colorado Springs, Colorado, and Kenneth Neiman, Steven J. Cole and Henry

A. Freedman, N.L.S.P., Center on Social Welfare Policy and Law, New York, New York, of Counsel, with him on the brief) for Appellees.

Before LEWIS, Chief Judge; PICKETT and McWILLIAMS, Circuit Judges.

LEWIS, Chief Judge.

In its present posture, this is a private action brought by appellees, Colorado welfare recipients, against state officials administering the Colorado welfare program. The appeal is from a judgment requiring appellants to implement a modification of the Colorado Division of Public Welfare Manual, § 4313.13 to comply with 42 U.S.C. § 602(a)(7) in determining a family's need under the Aid to Families with Dependent Children (AFDC) program. No party raises any question concerning the nature of the relief granted below.

The AFDC program is financed largely by the federal government on a matching fund basis and is administered by the states. An AFDC grant is computed by comparing a family's income and resources to a standard of need statistically determined by the state. The family income used in this comparison is gross family income less certain exclusions mandated by 42 U.S.C. § 602(a)(7), an employment expense provision, and 42 U.S.C. § 602(a)(8), an income disregard provision. On July 1, 1970 the Colorado Board of Social Services promulgated section 4313.13 of the Colorado Division of Public Welfare Manual. This regulation limits employment expenses under 42 U.S.C. § 602(a)(7) to a standardized $30 figure plus mandatory payroll deductions and child care expenses. The $30 standardized figure is an average based on a statistical survey and is meant to cover "employment

expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs. . . ." The Colorado method of treating employment expenses embodied in section 4313.13 was approved by the Department of Health, Education and Welfare.

Prior to the effective date of section 4313.13, Colorado excluded from family income all expenses reasonably attributable to the earning of such income. The effect of the new regulation which allows only a standardized exclusion for employment expenses other than mandatory payroll deductions and child care expenses was to reduce appellees' excludible [sic] employment expenses to such an extent that their net income after the exclusions was greater than Colorado's standard of need. As a consequence, appellees were ineligible for AFDC grants and they initiated this action seeking damages and declaratory and injunctive relief. The district court held that the standardization of employment expenses in the new Colorado regulation did not comply with 42 U.S.C. § 602(a)(7) and granted the relief sought.

42 U.S.C. § 602(a)(7) requires that a state AFDC plan must "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as *any* expenses reasonably attributable to the earning of any such income." (Emphasis added.) We interpret the words "any expenses" to mean all actual expenses. Thus 42 U.S.C. § 602(a)(7) requires the states to consider all actual expenses reasonably attributable to the earning of income in determining need. *See* Amos v. Engelman, D.N.J. 333 F. Supp. 1109, 1119 (three-judge court); *modified on other grounds,* 404 U.S. 23. This interpretation is con-

sistent with the congressional intent that the states should "take these [employment] expenses *fully* into account." S. Rep. No. 1589, 87 Cong., 2d Sess., 1962 U.S. Code Cong. & Ad. News 1943, 1960 (emphasis added). The use of a standardized employment expense exclusion does not take into consideration all actual expenses when a family's expenses exceed the standardized allowance. *CF* Amos v. Engelman, *supra*. In the instant case the appellees' actual employment expenses consistently exceeded the $30.00 standard exclusion. Consequently, Colorado's application of the standardized allowance in determining the appellees' needs does not comply with 42 U.S.C. § 602(a)(7). Campagnuolo v. White, D. Conn., Civil No. 13968; Adams v. Parham, N.D. Ga., Civil No. 16041.

The appellants maintain that the words "take into consideration" in 42 U.S.C. § 602(a)(7) sanction the use of a standardized employment expense exclusion in determining need in all cases. Their reasoning is that these words do not dictate a specified method for treating employment expenses and that the use of a standardized allowance is one acceptable way of taking into consideration expense of employment. The phrase "take into consideration" is flexible and by itself does not require a particular treatment of employment expenses. However, when considered in the statutory framework of 42 U.S.C. § 602(a)(7), these words assume a particular meaning. It should be noted that the phrase "take into consideration" modifies both "income" and "expenses." Consequently, Congress intended employment expenses to be treated in the same manner as income.[1] Since considera-

[1] When considering the 1962 amendment which added the employment expense provision, Congress specifically recognized that "all income of recipients . . . is taken into account . . . in determining need." S. Rep. No. 1589, 87 Cong., 2d Sess., 1962 U.S. Code Cong., & Ad. News 1943, 1959. (Emphasis added.) Thus Congress intended that all employment expenses also be considered. See 45 C.F.R. § 233-20 (a)(7)(i).

tion of each family's income must necessarily be based on actual rather than average figures, expenses attributable to the earning of such income must be taken into consideration in the same manner.

Appellants also contend that the Supreme Court in Rosado v. Wyman, 397 U.S. 397, approved the principle underlying the use of a standardized employment expense allowance. The Rosado case involved 42 U.S.C. § 602(a)(23) and sanctioned the use of statistical averages in computing a standard of need to be applied in the states' administration of their AFDC programs.[2] The Supreme Court has continually stressed the states' "undisputed power" to determine this standard of need. King v. Smith, 392 U.S. 309, 334; Dandridge v. Williams, 397 U.S. 471, 478. Congress itself did not encroach upon this undisputed power until the passage of 42 U.S.C. § 602(a)(23) in 1967.[3] Nevertheless, 42 U.S.C. § 602(a)(7) is indicative of congressional reluctance to give the states the same unfettered discretion to determine the needs of a particular family. Thus, Suprme Court approval of the use of statistical averages in determining the standard of need is not a mandate for judicial approval of such averaging in determining the needs of a particular family under 42 U.S.C. § 602(a)(7). *But see* Amos v. Engelman, D. N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23.

[2] In **Rosado** the Court said: "We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages. . . . Providing all factors . . . are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with [42 U.S.C. § 602(a)(23)] redefine its method for determining need. . . . New York is not foreclosed from accounting for basic and recurring items of need . . . by an averaging system." Rosado v. Wyman, 397 U.S. 397, 419-20.

[3] 42 U.S.C. § 602(a)(23) required the states to adjust their standards of need by July 1, 1969 in order to reflect cost of living increases.

Additionally, an understanding of the manner in which a state's standard of need and the computation of a particular family's available income and resources under 42 U.S.C. § 602(a)(7) complement each other illustrates the incongruity of Colorado's standardized employment expenses allowance in the instant case. The standard of need is a dollar amount representing the costs of those items which a state has determined to be necessary to maintain a hypothetical family at a subsistence level. Such an estimate by its nature is susceptible to computation through the use of statistical averages and it was thus fitting for the Supreme Court to approve the use of an averaging system in *Rosado*. A state must compare its standard of need to the income and resources actually available to the particular family in order to establish financial eligibility and the amount of an AFDC grant. 45 C.F.R. § 233.20(a)(3)(ii)(a) and (c). 42 U.S.C. § 602(a)(7) requires that the computation of income and resources available to the particular family must take into consideration any expenses reasonably attributable to the earning of income. To uniformly apply a standardized employment expense allowance rather than consider actual expenses in this computation would render meaningless the process of comparing a particular family's available income and resources with a hypothetical family's standard of need.

The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence to this standard when a particular family's expenses of employment exceed the allowance. In such cases, Colorado's standard allowance operates as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. § 602(a)(7). Williford v. Laupheimer, E.D. Penn., 311 F. Supp. 720 (three-judge court). Nevertheless, a

reasonable interpretation of the statute permits "a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, *provided the allowance is adequate to cover all actual expenses.*" Amos v. Engelman, D.N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23. (Emphasis added.)

Our interpretation of 42 U.S.C. § 602(a)(7) is consistent with the statutory history and the explicit congressional purpose of providing AFDC families with an incentive to seek employment. S. Rep. No. 1589, 87 Cong. 2d Sess., 1962 U.S. Code Cong. & Ad. News 1943, 1960. Although appellants present numerous policy reasons for a different result, it is not within our realm to legislate social policy. Jefferson v. Hackney, 406 U.S. 535, 541; Dandridge v. Williams, 397 U.S. 471, 487; Rosado v. Wyman, 397 U.S. 397, 422. One specific policy argument deserving comment even in the context of our limited role is the appellants' contention that our decision will compel states to consider unnecessary expenditures. Such fears should be allayed by the statute itself which requires that the subject expenses be reasonably attributable to the earning of income.

Appellants emphasize the approval of section 4313.13 of the Colorado Division of Public Welfare Manual by the Department of Health, Education and Welfare and maintain that this approval should be accorded substantial weight as a statutory interpretation by the department responsible for the administration of the Social Security Act. This principle, however, is inapplicable when a departmental interpretation is inconsistent with the controlling statute. Townsend v. Swank, 404 U.S. 282, 286. Equally without merit is appellants' contention that under

42 U.S.C. § 604(a)(2) states need only substantially comply with federal statutory requirements. *See* Rosado v. Wyman, 397 U.S. 397, 408; King v. Smith, 392 U.S. 309, 316-17. 42 U.S.C. § 604(a)(2) provides an administrative procedure whereby the Secretary of Health, Education and Welfare may cease funding state programs in order to compel substantial compliance with federal statutory requirements. This statute is inapposite in suits by prospective recipients against state agencies responsible for the administration of the AFDC program.

Affirmed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs

v.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants

Legal Services Office of El Paso County by Messrs. James W. Kin and Tom W. Armour, Attorneys at Law, 104 South Tejon, Suite 300, Colorado Springs, Colorado, for Plaintiffs; Mr. Duke W. Dunbar, Attorney General and Mr. John P. Moore, Deputy Attorney General by Messrs. Douglas D. Doane and Charles B. Lennahan, Special Assistant Attorneys General, 104 State Capitol, Denver, Colorado, for State defendants; Mr. Norman A. Palermo, Attorney at Law, Suite 602 Pikes Peak Building, Colorado Springs, Colorado, for defendant Pobanz.

MEMORANDUM OPINION

ARRAJ, Chief Judge.

Following our summary judgment in this case, defendants submitted a pleading denoted "Motion for a New Trial" and a request for a stay of execution to permit

the court to examine "newly discovered evidence" in the form of an amicus curiae brief submitted on behalf of the Secretary of Health, Education and Welfare (HEW) in a case similar to the present one. We allowed a temporary stay pending our reconsideration of this case and to consider the position of HEW. We have fully considered the additional facts and background presented by HEW and determine that they do not affect the legal conclusion we reached earlier.

The defendants seem to misunderstand the nature of the deference shown to HEW. If the question before us were whether a flat grant system would simplify and streamline the AFDC program, then we might well be persuaded that it would. Were we deciding the wisdom of creating a "consumption incentive" by not rewarding welfare recipients who cut down on their work-related expenses, our conclusion might be that this was not a wise policy. But these are not the questions before this court; we are asked to interpret § 402(a)(7) of the Social Security Act, 42 U.S.C. § 602(a)(7).

As we noted earlier, Congress enacted § 402(a)(7) to remove the disincentive to work caused by the increased expenses resulting from most jobs. We should keep in mind that when this amendment was passed, it was the only income disregard provision of general application. (Certain stipends paid in connection with job-training programs were being disregarded.) It was not until several years later that § 402(a)(8) created positive incentives to work by providing that the first $30 per month plus 1/3 of the remainder shall be disregarded in determining need.

It may well be that § 402(a)(7) is an anacronism

and that it would be better simply to increase the incentive under § 402(a)(8) by another $30, say, which is approximately the effect of Colorado's Section 4313.13 provision. Congress has not chosen to do this, and no amount of deference to HEW's technical knowledge and administrative experience would justify our rewriting the enactment or contorting its meaning.

A comparison of the cases of *King v. Smith,* 392 U.S. 309 (1968) and *Lewis v. Martin,* 397 U.S. 552 (1970) demonstrates the kind of deference courts should show to HEW. Both cases voided state regulations which would have considered the income of "substitute fathers" or of "men assuming the role of a spouse" in determining need, as violative of the Social Security Act. When *King v. Smith,* was decided, HEW generally approved state programs containing a "man-in-the-house" provision. *King v. Smith, supra* at 334 (Douglas, J., concurring). The particular Alabama regulation involved had not been sanctioned by HEW because of its unique provision that a man cohabiting or having frequent sex relations with a dependent child's mother outside the mother and child's home could be considered a "substitute father." The Court did not adopt the HEW position, but went further, concluding that no "substitute father's" income could be considered unless he was legally obliged to support the child. HEW revised its regulations to conform to this decision, adding a provision that a stepfather's income would not be considered unless he was "legally obliged to support the child under State law of general applicability which required stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children." *Lewis v. Martin* upheld this regulation because HEW could "reasonably conclude that an obligation to support under state law must be of 'gen-

eral applicability' to make that obligation in reality a solid assumption on which estimates of funds actually available to children on a regular basis may be calculated." 397 U.S. at 558-559. The Court did not want state law to become a device for lowering welfare costs without guaranteeing the child would actually regularly receive the income of the stepparent. Thus it can be seen that a position taken by HEW based simply on its own interpretation of a statutory enactment does not receive the same deference as a HEW position based on HEW's factual understanding of the realities of the program it administers. *Cf. Torres v. New York State Department of Labor,* 321 F. Supp. 432 (S.D.N.Y. 1971), vacated 402 U.S. 968. We would show deference to HEW's factual conclusions that a flat grant may be a more efficient way to deal with work expenses, but we cannot agree with its legal conclusion that § 402 (a)(7) allows this.

The HEW amicus brief describes the process it would require states to go through in order to arrive at a figure which would take expenses "fully into account."

> . . . [A]s a starting point in justifying its flat amount of $35 for work expenses . . . Georgia must identify exactly what items of work expenses are being covered, and on what basis . . .
>
> Once the items have been identified, the much harder job is to show that they have been fairly priced and fairly averaged. The averaging itself may be quite intricate mathematically, but it can be accomplished readily by those who have the requisite competence, provided the data are available on how many individuals had what work expense at what monthly cost. The real problem is to gather the data.
>
> For the agency to conduct an interview in depth

with each recipient who works, and thus determine the exact work expense, and repeat this process over many months to reflect seasonal variations, would yield accurate information, but would be wasteful of time, staff and money. Statistical sampling techniques can yield sufficiently valid results that the State already has information in its case records [sic.], the sampling can be facilitated by using the case records rather than interviews. Nevertheless, under the current HEW practice, a State that wishes to use a flat amount must validate it by accepted techniques of one kind or another.

. . . [C]urrent costs of work expense items . . . could be [ascertained] by interviewing a cross-section of cases. Alternatively, the State could analyze a sample of its case records for periods prior to May, 1969, when the State recognized work expenses on an individualized basis. The costs thereby determined would of course have to be updated to reflect increases in cost levels since the period surveyed. . . .

[A flat amount] must be supported by vigorous justification on an adequate objective basis. . . .

We cannot believe Congress intended to force states to go through such an elaborate process in order to arrive at an approximation. Rather, Congress insisted expenses be taken "fully" into account in order that no recipient would suffer under a disincentive to work, since at that time there were not the positive incentives that now exist.

In conclusion, it should be understood that we are expressing no opinion whatsoever as to whether the work expenses claimed by Mrs. Vialpando are or are not reasonably related to her employment. We hold only that

Colorado may not use a flat amount for work expenses and deny Mrs. Vialpando credit on that basis.

For the reasons herein given, defendants' motion for a new trial is denied.

DATED at Denver, Colorado, this 9th day of March, 1972.

BY THE COURT:

ALFRED A. ARRAJ,
Chief Judge
United States District Court

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs

v.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants

JUDGMENT

[Filed Feb. 17, 1972]

This action having come on for hearing before the Court on December 17, 1971, Honorable Alfred A. Arraj, Chief Judge, United States District Court, presiding, and the issues having been duly heard and an opinion having been duly rendered on January 13, 1972.

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED as follows:

1. That the Plaintiff's Motion for Summary Judgment is hereby granted and the Defendants' Cross-Motion for Summary Judgment is hereby denied in conformance with the opinion rendered by this Court on January 13, 1972.

2. The defendants are granted a stay of ten days from and after the date of entry of this judgment for the purposes of seeking an appeal or review of this ruling. This judgment shall not be effective until said ten day period has expired.

3. That the State of Colorado, the State Board of Social Services and Con F. Shea, Executive Director of the Department of Social Services, State of Colorado, are hereby ordered and directed at the next regularly scheduled meeting of the State Board of Social Services, after this judgment becomes effective to implement the modification of Section 4313.13 of the Colorado Division of Public Welfare Manual, Vol. IV, to comply with the Federal Social Security Act and H.E.W. regulations as is set out in the Court's Opinion of January 13, 1972.

4. That this case is not and has not been a class action. Accordingly, it does not afford declaratory relief to the members of the alleged class.

5. That this judgment confers no right upon the members of the alleged class to retroactive payments.

6. That pursuant to the Order of the Court entered January 13, 1972, the named plaintiffs are entitled to damages due to the defendants' miscalculation of plaintiffs' work expenses and that the amount of such damages shall be determined by the administrative process of the defendants' state and county agencies.

7. Each party shall bear their own costs.

Appendix C-3

Dated February 17, 1972.

ALFRED A. ARRAJ
Chief Judge
United States District Court

Approved as to Form:

JAMES W. KIN
Attorney for Plaintiffs

DOUGLAS D. DOANE
Attorney for State Defendants

NORMAN A. PALERMO
Attorney for Defendant Pobanz

[Entered on the Docket Feb. 18, 1972]

Appendix D-1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action C-2449

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Plaintiffs

v.

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. MCBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Defendants

[Filed Jan. 13, 1972]

Legal Services Office of El Paso County by Messrs. James W. Kin and Tom W. Armour, Attorneys at Law, 300 Old Colorado Commercial Bank Building, Colorado Springs, Colorado, for Plainitffs; Mr. Duke W. Dunbar, Attorney General and Mr. John P. Moore, Deputy Attorney General by Mr. Douglas D. Doane, Special Assistant Attorney General, 104 State Capitol, Denver, Colorado, for State defendants; Mr. Norman A. Palermo, Attorney at Law, Suite 602 Pikes Peak Building, Colorado Springs, Colorado, for defendant Pobanz.

Appendix D-2

MEMORANDUM OPINION AND ORDER

ARRAJ, Chief Judge

This case raises the question of whether Colorado has complied with the requirements of § 402(a)(7) of the Social Security Act, 42 U.S.C. § 602(a)(7),[1] that state welfare agencies, in figuring financial need under the Aid to Families with Dependent Children (AFDC) program, "shall . . . take into consideration . . . any expenses reasonably attributable" to the earning of income by an employed welfare recipient, when it allows a flat thirty dollar credit regardless of the recipient's actual work-related expenses. Plaintiff brings this as a class action on behalf of all employed welfare recipients whose actual work-related expenses exceed thirty dollars per month, but who are allowed credit for only thirty dollars under the provisions of Section 4313.13 of the Colorado Division of Public Welfare Staff Manual, Vol. IV,[2] and the practices of the defendants. She claims that the Colorado rules and practices violate § 402(a)(7) of the federal act and do not meet the requirements of the regulations adopted by the Department of Health, Education and Welfare. 45 C.F.R.

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[1] Title 42 U.S.C. § 602(a)(7) provides:

> (a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual living in the same home as such child and relative whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; . . .

[2] Section 4313.13 includes the following provision:

> For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, an allowance of $30 per month is made for such costs.

§ 233.20(a)(3)(iv).[3] She also raises constitutional questions which are not under consideration at this time.[4] The case is presently before us on both parties' motions for summary judgment.

The facts are not in significant dispute. The plaintiff Ascension Vialpando was employed and receiving an Aid to Families with Dependent Children grant of seventy-four dollars per month prior to July, 1970. Effective July 1, 1970, the defendants promulgated a new regulation limiting the amount of work-related expenses which a recipient could have exempted from deductions in determining AFDC grants to thirty dollars (besides mandatory payroll deductions). This regulation reduced the plaintiff's budgeted work-expense figure from $181.83 to $85.72 ($55.72 mandatory payroll deductions plus thirty dollars), making the plaintiff ineligible for AFDC. Plaintiff claims that while in theory she should have been able to be self-sufficient, since her earnings adequately provided for her budgeted needs, in fact $96.11 of her earnings had to be used to earn that income and was not available to be ap-

[3] Title 45 C.F.R. § 233.20 provides:

(a) Requirements for State Plans. A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:

. . .

(3) Income and resources; . . .

(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment; (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, . . . (c) only such net income as is actually available for current use on a regular basis will be considered and only currently available resources will be considered; . . .

. . .

(iv) Provide that, in determining the availability of income and resources, the following will not be included as income: (a) Income equal to expenses reasonably attributable to the earning of income; . . .

[4] We will recommend that a three-judge court be convened only if the case cannot be disposed of on the statutory ground. **Davidson v. Shaffer**, C.A. No. C-3224 (D. Colo. Nov. 10, 1971); **see Rosado v. Wyman**, 397 U.S. 397, 40 (1970).

plied to her basic needs. In August, 1970, the plaintiff terminated her employment and again received an AFDC grant. On September 1, 1971, plaintiff returned to work and now has expenses of over $100 per month which she alleges are reasonably related to her employment.

Section 402(a)(7) of the Social Security Act amendments of 1962 was designed to encourage welfare recipients to obtain employment, even if their salaries from that employment would not enable them to be completely self-sufficient. Congress recognized that certain extra expenses are incurred by a person holding a job. The Senate report on the bill explains the purposes of this section:

> Under present law, all income of recipients of public assistance is taken into account (with a limited exception under title X in determining need. States are permitted, but not required, to take into consideration the expenses an individual has in earning any income (this practice is not uniform in the country and in a substantial number of States full consideration of such expenses is not given). The committee believes that it is only reasonable for the States to take these expenses fully into account. Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore, added a provision in all assistance titles requiring the States to give consideration to any expense reasonably attributable to the earning of income. S. REP. NO. 1589, 87th Cong., 2d Sess., found at U.S. CODE CONG. & AD. NEWS 1943, 1959-1960 (1962).

We believe that Congress clearly intended for states to give full credit for all expenses reasonably related to a recipient's employment.

The question of the validity of Colorado's § 4313.13 depends then upon whether a state must comply with all the provisions of the Social Security Act when it accepts federal funds threeunder or whether an approximate compliance is sufficient. The defendant argues that thirty dollars per month is a reasonable approximation of the actual work-related expenses of most employed recipients and that by taking this sum into consideration they have complied sufficiently with § 402(a)(7) of the Social Security Act. "Since the $30 figure accurately reflects the average necessary expenses, an allowance in that amount should be sufficient in most cases." Defendants' Memorandum Brief, p. 7. We note, however, that several recent Supreme Court decisions seem to require quite strict compliance with federal standards. *See, e.g., California Department of Human Resource Development v. Java,* 91 S. Ct. 1347 (1971); *Rosado v .Wyman,* 397 U.S. 397 (1970); *King v. Smith,* 392 U.S. 309 (1968). The only support for the proposition that a state may "approximately" comply with federal requirements that we can find in the defendants' brief and through our own research is dicta in *Rosado v. Wyman* and in *Amos v. Engleman,* C.A. No. 1340-69 (D.N.J., July 6, 1970). We do not read either case as actually supporting the proposition or helping the defendants' position.

In *Rosado* the Court invalidated a New York law which would have redefined the "standard of need" used to determine eligibility for welfare assistance by replacing itemized grants with a flat grant maximum and eliminat-

ing the "special grant" program. The objection to this law was that it would have reduced the content of New York's standard of need, thus lowering it, which the Court found to be prohibited by § 402(a)(23). This section

> invalidates any state program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of § 402(a)(23), unless a State can demonstrate that the items formerly included no longer constituted part of the reality of existence for the majority of welfare recipients. We do not, of course, *hold that New York may not,* consistently with the federal statutes, *consolidate items on the basis of statistical averages. . .* Providing all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with § 402 (a)(23) redefine its method for determining need. . . What is at the heart of this dispute is the elimination of special grants in the New York program, not the system of maximum grants based on average age. (Emphasis added.)

We cannot read this as a carte blanche to the states to reasonably average any and all figures to save administrative costs, as the defendants would apparently like for us to do. The standard of need is defined by the states, and the particular method chosen by the states, provided it does not serve to skirt the reevaluation requirements of § 602(a)(23), does not affect any federal policy. Thus, the use of statistical averages in computing items of need is in *complete* compliance with the requirements of the Social Security Act. The averaging discussed in *Rosado* is legitimate not because *approximate* compliance with the

Act is sufficient, but because this particular method of setting a standard of need is completely consistent with the language and purposes of the Social Security Act.

On the other hand, when Colorado does not take employment expenses in excess of thirty dollars per month into consideration in determining need, it provides a disincentive to all recipients whose work-related expenses exceed or would exceed thirty dollars from seeking or retaining employment. This is in direct opposition to the federal policy contained in § 402(a)(7). For this reason we find the state regulation invalid and hold that the defendants should be enjoined from enforcing such regulation. This same conclusion was reached in *Williford v. Laupheimer,* 311 F. Supp. 720 (E.D. Pa. 1969). *See also, Alameda County v. Carleson,* 97 Cal. Rptr. 385, 488 P.2d 953 (1971).

Apparently, the only other case to consider a provision similar to Colorado's was *Amos v. Engleman, supra.* The court enjoined the enforcement of certain New Jersey provisions as violative of 402(a)(8), but refused to disapprove a $50 flat deduction for expenses reasonably attributable to employment, holding:

> There is nothing in this record to establish that $50 is an unreasonable amount for business expense or that the plaintiffs in this action or the persons they represented have incurred monthly business expenses in excess of $50. We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses. *Id.* at 21.

The court seems to base its decision on the plaintiffs' failure to allege or show actual work expenses in excess of $50. The court indicated that the plaintiffs were not precluded from showing the $50 to be "unreasonable or inadequate." The court also, however, quotes from *Rosado,* and adds, "If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses." *Id.* at 22. As stated above, we feel this analogy is unsound; therefore, to this extent we may disagree with *Amos v. Engleman.* We would agree, however, that the requirements of the Social Security Act must be "strictly applied" to the states. *Id.* at 17.

We conclude that Section 4313.13 of the Colorado Division of Public Welfare staff manual, Vol. IV, contravenes § 402(a)(7) of the Social Security Act [42 U.S.C. § 602 (a)(7)]. We further conclude that employment expenses under the AFDC program can be standardized only in accordance with § 3140 of the Handbook of Public Assistance Administration. It is therefore

ORDERED that plaintiff's motion for a summary judgment be and the same hereby is granted, and the defendants' motion for a summary judgment be and the same hereby is denied.

Dated at Denver, Colorado, this 13th day of January, 1972.

BY THE COURT:
ALFRED A. ARRAJ
Chief Judge
United States District Court

APPENDIX E

HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION

Part IV 3100-3199

Eligibility and Payments to Individuals—Need—3/11/57

3140. Specific Applications — Income and Resources

1. Employment Expenses

A State public assistance agency may establish a reasonable minimum money amount to represent the combined additional cost of three items — food, clothing, and personal incidentals — for all employed persons. The State plan may provide that other items of work expense will be allowed when there is a determination that such expenses do, in fact, exist in the individual case. On the basis of such a finding in fact of the existence of other expenses related to employment, money amounts for such expenses may be added above the minimum flat amount, provided no duplication of items exists. This method is acceptable, whether the items of work expense are included in a State's standard for requirements, or whether the agency uses the method in arriving at net income in determining resources.

The purpose of this interpretation is to help States simplify administration by eliminating the need for individual case determinations of certain common needs of employed persons. Increased food necessitated by increased activity along with increased clothing and grooming necessitated in holding a job may be standardized and accepted as common needs of all employed persons. The

State agency should be in a position to support the reasonableness of any minimum money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients.

• • •

APPENDIX F

HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION

Part IV 3100-3199

Eligibility, Assistance, and Services—Need—4/22/64

3140. Specific Applications — Income and Resources

1. Employment Expenses

Sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(14) of the Social Security Act require that, in considering income and resources, the State agency shall take into consideration any expenses that are *reasonably attributable* to the earning of any such income. These requirements became effective July 1, 1963, with the exception of title XVI, which is effective with the approval of the State plan. For similar provision applicable in the Community Work and Training Program under title IV, see IV-3462.21 and IV-3463.

Interpretation

The provision for the consideration of expenses of earning income was included in the law to insure that all States will recognize work expenses in determining net income. Also, if work expenses are not considered by a State agency in its plan material, it has the effect of failing to provide an incentive for working since that portion of the family income spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter.

Increased food necessitated by greater activity, along

with the additional clothing and its care, and better grooming necessitated in holding a job, *may be standardized* as accepted, common needs of all employed persons. Therefore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional cost of these three items — food, clothing, and personal incidentals — for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. This method is acceptable, whether the items of work expenses are included in a State's standard for requirements, or whether the agency uses the method of deduction of work expenses from earned income in arriving at the individual's net income from his employment.

Items of work expenses must be allowed when there is determination that such expenses do, in fact, exist in the individual case. On the basis of a finding of the existence of expenses related to employment, money amounts for such expenses must be added to the individual's needs or deducted from his earned income in such a way as to assure that no duplication of items will exist.

In addition to the increased cost of food, and additional amounts of clothing, care of clothing and personal incidentals, other expenses reasonably attributable to earning income might include:

Special safety or protective clothing items or uniforms and the cost of cleaning or laundering of these special items.

Participation in the "snack break" where it is the custom for that employment.

Transportation to and from work and transportation on job if not reimbursed by the employer.

Contributions to collections for employee benefits, etc., as are found to be necessary in connection with holding the job.

Tools and licenses required for the job.

Dues to unions, business organizations, employee clubs, or similar assessments.

Educational expenses related to employment, including any necessary publications.

Care of child(ren) at home or in day-care facilities, cost of more expensive ready prepared foods for the family when the housewife works.

Special safety devices needed by handicapped people not furnished by the employer.

Requirement for State Plans

Effective July 1, 1963, a State plan under titles I, IV, X, and XIV, and, effective on approval, a State plan under title XVI, must provide that, in determining need, any expenses reasonably attributable to the earning of income will be taken into consideration.

H.T. No. 22

APPENDIX G

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE

Washington, D.C. 20201

Assistance Payments
Administration

September 26, 1969
SRS-APA-PS

TO STATE AGENCIES ADMINISTERING
APPROVED PUBLIC ASSISTANCE PLANS

Subject: Conversion Tables for the Application of the Disregard of the First $30 and 1/3 of the Remainder of the Gross Income of AFDC Family

The attached Conversion Tables have been developed for your optional use in cooperation with the National Center for Social Statistics and staff of several Regional Offices as a tool for applying the disregards mandated in Section 402(a)(8)(A)(ii) of the Social Security Act and SRS Program Regulation 20-7 Section 233.20(e) 11 (ii) (b).

Tables have been devised according to weekly, (Column 1), bi-weekly, (Column 2), semi-monthly, (Column 3) and monthly (Column 4) pay periods, whichever is appropriate for the individual cases. The monetary amounts are expressed as gross earnings.

Column 5 represents the amount remaining after the application of the disregard of the first $30 and 1/3 of the

remainder. These amounts have been rounded for $.50 (fifty cents) and over to the nearest dollar. For State agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables may be further adjusted as demonstrated below,

For example: In a situation where a State agency has an established standard of a $50 per month for all mandatory payroll expenses and all occupational expenses, the attached tables for such a State agency could be adapted to read as follows:

Conversion Tables of Gross Earnings by Frequency of Pay Period. The Application of the Disregard of the First $30 and 1/3 Remainder of AFDC Family Gross Income and Deduction of State Standard of Expenses Reasonably Attributable to the Earnings of One Wage Earner.*

(1) Weekly	(2) Bi-Weekly	(3) Semi-Monthly	(4) Monthly	(5) Net Amount Remaining Less $30 and 1/3 of Expenses of One Wage Earner
Up To:	Up To:	Up To:	Up To:	
24.06 - 24.40	48.12 - 48.80	52.13 - 52.87	104.25 - 105.74	0
24.41 - 24.74	48.81 - 49 49	52.88 - 53.62	105.75 - 107.24	1.00
24.75 - 25 09	49.50 - 50.19	53.69 - 54.37	107.25 - 108.74	2.00
25.10 - 25.44	50.20 - 50.88	54.38 - 55.12	108.75 - 110.24	3.00
25.45 - 25.78	50.89 - 51.57	55.13 - 55.87	110.25 - 111.74	4.00

Methodology for application of the mandated disregard in AFDC (AFDC family eligible in accordance with Section 402(a)(8) (D) of the Social Security Act.)

1. If State agency has opted to disregard not more

(* For each additional wage earner, deduct amount designated by State agency.)

than $5 a month per recipient of any income, deduct this designated amount.

2. Disregard all the earned income of any dependent child who is a full or part-time student who is not a full-time employee.

3. From the remaining gross income of the AFDC family apply the disregard of the first $30 and 1/3 of the remainder.

4. From the remaining amount in 3 above, subtract expenses reasonably attributable to the earning of income for each wage earner (excepting those expenses attributable to the earnings of a dependent child whose income is disregarded in accordance with 2 above).

5. If State agency has opted to provide for conservation of income for future identifiable needs of a child, deduct the applicable amounts.

6. The remainder from 4 and 5 above, whichever is applicable, plus all other available income is subtracted from the amount used by the State to determine need and the amount of the assistance payment.

Determination or redetermination of eligibility for AFDC family who has not been receiving AFDC for any one of the four months preceding the month of the determination.

1. The total AFDC family income, earned and unearned, less only the expenses reasonably attributable to earning of income for each wage earner is to be applied to the appropriate amount used by the State to determine need.

2. If there is a budget deficit without the application of any of the disregards and conservations (that is the disregard of student earned income, first 30 and 1/3 remainder, setting aside for future needs of a child, and the disregard of up to $5 per recipient of any income — Sections 402(a)(8) A (i) & (ii), 402(a)(8)B(i)&(ii) of the Social Security Act, respectively then the method as identified in the above is applicable.

3. If there is no budget deficit, that is the total AFDC family income exceeds the appropriate amount used by the State to determine need, the family is not eligible.

Sincerely,

STEPHEN P. SIMONDS
Commissioner

APPENDIX H

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE

Region VIII
Federal Office Building
19th and Stout Streets
Denver, Colorado 80202

May 15, 1972

Social and Rehabilitation
Service

ASSISTANCE PAYMENTS
REGIONAL MEMORANDUM NUMBER 12

Subject: Standard Allowance for Expenses Reasonably Attributable to Earning of Income

To: State Welfare Directors
Region VIII

1. The 1962 Amendments to the Social Security Act amended the Act to provide that in determining need the State agency shall take into consideration any expenses reasonably attributable to the earning of any such income. Welfare Administration, Bureau of Family Services, State Letter No. 674 attached the publication titled "Public Assistance 1962." It states as follows: "Other work incentives were offered through provisions that . . . require taking into account necessary expenses that can be reasonably attributable to the earning of income in determining need under all the Federally aided assistance programs."

2. In accordance with 45 CFR 233.20(a)(3)(iv), a

State plan must provide that income equal to expenses reasonably attributable to the earning of income will not be included as income. Under 45 CFR 233.20(a)(6)(iv), earned income means the total amount, irrespective of personal expenses, such as income tax deductions, lunches and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers. 45 CFR 233.20(a)(7)(i) also requires the plan to provide as part of the method for disregarding earned income, that all work expenses, personal and non-personal, will be deducted. SRS unnumbered State Letter of September 26, 1969, recognizes that "for State agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables (for use in applying the disregard) may be further adjusted as demonstrated below."

3. Accordingly, it is clear under the Federal policy that State agencies must, as a minimum, consider those items of work expenses identified in 45 CFR 233.20(a)(6)(iv), namely, mandatory payroll deductions, lunches, transportation to and from work, tools, materials and special uniforms and child care costs incurred because of the employment.

4. HEW has accepted State proposals to use a flat amount for expenses attributable to earning of income (other than child care expenses), *where there has been a factual justification of the reasonableness of the flat amount,* as being consistent with the Federal requirements for simple and efficient program administration, and as resulting in an equitable and uniformly administered program. This is also consonant with the requirement in 45

CFR 233.20(a)(1) that States determine need and the amount of assistance for all applicants and recipients on an objective and equitable basis.

5. *Individualization of expenses is also acceptable under Federal policy. The use of a justified flat amount for some items, rather than all items, is also acceptable.* For example, State agencies have developed justified flat amounts for all expenses other than mandatory payroll deductions and child care (which costs are recognized on an indivdual basis). There are other intermediate combinations. Individualization of expenses up to *a maximum is not acceptable,* because most recipients would not be treated equitably and uniformly under such a method.

JOHN P. SKILLERN
Acting Associate
Regional Commissioner
Assistance Payments

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Supreme Court, U. S.
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JUN 13 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. McBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners,

vs.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado

Brief of the State of California Amicus Curiae, in Support of Petition

Joined in by the States of Arizona, Connecticut, Illinois, Nebraska

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SUBJECT INDEX

	Page
Statement of the Interest of the State of California	2
Argument	7
I. The Secretary of Health, Education and Welfare, the Person Charged with Administering the Social Security Act, Has Interpreted That Act to Permit States to Utilize a Standard Allowance for Work Expenses When Based Upon a Statistical Average	7
II. A Uniform Standard Allowance for Work Expenses Is to Be Distinguished from a Maximum Allowance for Such Expenses	13
III. The Construction Placed Upon the Social Security Act by the Opinions of the Lower Courts Seriously Hinders the Effective Administration of the Social Security Act as It Fails to Recognize That the States Have Placed Great Reliance on the Long-Standing Interpretation Given the Social Security Act by the Secretary and Its Plan Approval Under the Act	20
Appendices	

TABLE OF AUTHORITIES CITED

Cases	Pages
Adams v. Parham U.S. Dist. Ct., Northern Dist of Georgia, Atlanta Division, Civil Action No. 16041 (filed April 14, 1972)	11, 12, 13, 15, 16
Amos v. Engelman 333 Fed.Supp. 1109 (1970)	10, 11, 15, 16, 17, 19
Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare 448 Fed. 2d 209 (2d Cir. 1971)	22
Conover v. Hall 28 Cal. App. 3d 676 (1972) (Hearing granted California Supreme Court January 17, 1973)	6, 7
County of Alameda v. Carleson 5 Cal. 3d 730 (1971) appeal dismissed 406 U.S. 913 (1972)	10, 13
Jefferson v. Hackney 406 U.S. 535 (1972)	2, 18, 19, 20
King v. Smith 392 U.S. 309 (1968)	2
Lewis v. Martin 397 U.S. 552 (1970)	24
Rosado v. Wyman 397 U.S. 397 (1970)	2, 10, 16, 18, 19, 23
Udall v. Tallman 380 U.S. 1 (1965)	24
United States v. City of Chicago 400 U.S. 8 (1970)	24
Vialpando v. Shea United States Court of Appeals Tenth Circuit Nos. 72-1218 and 72-1345 January 1973 Term	14
Villa v. Hall 6 Cal. 3d 227 (1971) vacated and remanded 406 U.S. 965 (1972) 7 Cal. 3d 926 (1972)	5
Williford v. Laupheimer 311 F. Supp. 720 (E.D. Pa. 1969	15, 17

Pages

Federal Regulations

45 C.F.R. 201 2
201.3 24
201.3(a)-(c) 8
201.6 21
213.1 through 213.33 21
233.20 2

42 U.S.C. 301 2
601 through 644 2
602(a)(7) 2, 3, 6, 8, 15, 20
602(a)(8)(A)(ii) 2, 11
602(a)(23) 19

Social Security Act of 1935

§ 402(a)(7) 2, 6, 8, 12, 15, 20
§ 402(a)(8) 11

State Codes and Statutes

EAS 44-113 4
44-113.2 4
44-113.23 18
44-113.232 ..... 10, 11, 21
44-114 ..... 4, 18

California Welfare and Institutions Code

§§ 11200 through 11488 2
11450 21
11451.6 ..... 3, 4, 5, 6, 7, 17, 21

Welfare Reform Act of 1971 (Chapter 578, California Statutes, 1971) § 28.1 3

Miscellaneous

Handbook of Public Assistance Administration Part IV, Section 3140 ..... 8, 9, 10, 11, 21

Regulation 3234.1, Pennsylvania Department of Public Welfare 15

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO; CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. McBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES; and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners,

vs.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO, and both on behalf of all others similarly situated,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Colorado

Brief of the State of California Amicus Curiae, in Support of Petition

Joined in by the States of Arizona, Connecticut, Illinois, Nebraska

The State of California, as amicus curiae, respectfully supports the petition of Con F. Shea, Executive Director of the Department of Social Services of the State of Colorado, and his copetitioners, praying that a Writ of Certiorari issue to the United States Court of Appeals for the Tenth

Circuit. For Opinions Below, Jurisdiction, Questions Presented, Constitutional and Statutory Provisions involved and Statement of the case, see the petition.

The State of California is joined as amicus curiae by the States of Arizona, Connecticut, Illinois and Nebraska.

STATEMENT OF THE INTEREST OF THE STATE OF CALIFORNIA

The State of California participates in the Aid to Families with Dependent Children Program (hereinafter "AFDC"). Sections 11200 through 11488 of the California Welfare and Institutions Code. The relationship between the federal government and the States in programs established under the Social Security Act requires participating States to conform to federal requirements as a condition of continued receipt of federal funds. *King v. Smith,* 392 U.S. 309, 316-317 (1968); *Rosado v. Wyman,* 397 U.S. 397, 407-409 (1970); *Jefferson v. Hackney,* 406 U.S. 535 (1972).

The federal law to which the States must conform is set forth in the Social Security Act of 1935. 42 U.S.C. 301, et seq. The regulations interpreting the Social Security Act are set forth in 45 C.F.R. 201, et seq. The Department of Health, Education and Welfare also publishes a handbook further interpreting the Act and regulations. That handbook is entitled the Handbook of Public Assistance Aministration.

The AFDC program established by the Social Security Act of 1935 has been amended from time to time (see 42 U.S.C. 601 through 644). As part of the 1962 amendments, section 402(a)(7) was added to the Social Security Act to be effective July 1, 1963 (42 U.S.C. 602(a)(7)).[1] 45 C.F.R.

1. The legislative history of the 1962 amendments is set forth in Senate Report No. 1589, June 14, 1962, and is published in United States Code, Congressional and Administrative News, 87th Congress--Second Session 1962 at pages 1943-1983.

233.20 contains the federal regulations interpreting the amendment. This addition required that as a condition to the continued receipt of federal grants, each of the various States participating in the AFDC program must have a State plan which provides ". . . that the State agency shall, in determining need, take into consideration . . . any expenses reasonably atributable to the earning of . . . income; . . ." 42 U.S.C. 602(a)(7).

During the 1971 Legislative Session, the California Legislature adopted a comprehensive Welfare Reform Act entitled the Welfare Reform Act of 1971 (Chapter 578, California Statutes, 1971). Section 28.1 of that act added section 11451.6 to the Welfare and Institutions Code to be effective October 1, 1971. It provides as follows:

> "Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967)."
> (See Appendix A hereto)

On October 1, 1971, section 11451.6 of the Welfare and Institutions Code became effective and controled the content of the work-related expense component of the California Plan for AFDC and became the operative legislative enactment by which California complied with section 42 U.S.C. 602(a)(7).

The Director of Social Welfare adopted regulations EAS 44-113, et seq. and distributed them as required by law to be effective October 1, 1971 (see Appendix C hereto). These regulations implement section 11451.6 of the Welfare and Institutions Code. These regulations repeal those regulations by which county welfare departments formerly determined the work-related expense component of AFDC entitlements prior to the Welfare Reform Act. Regulations EAS 44-113.2 and 44-114 are set forth in Appendix D.

On October 1, 1971, the Director of Social Welfare requested the views of the Department of Health, Education and Welfare as to whether any provision of federal law precluded a standard allowance for work-related expenses. (Telegram dated October 1, 1971, set forth in Appendix B-1 hereto.) On October 4, 1971, the Regional Commissioner replied by telegram advising the Director that a standard allowance for work-related expenses is permissible for purposes of simple and efficient administration. (Telephone transcription of the telegram is set forth in Appendix B-2 hereto.)

It was the intent of the California Legislature that effective October 1, 1971, the computation of the work-related expense component in determining AFDC entitlements was to be governed by section 11451.6 of the California Welfare and Institutions Code.

The California Plan for computing AFDC entitlements by the use of the standard allowance for work-related expenses authorized by section 11451.6 includes the following process to determine net income:

> Assuming a family with earned income of $480.00 per month from full-time work with actual child care expenses of $100 per month:

1. Determine earned income (assumed)	$480.00
2. Subtract $30, plus ⅓ of the remainder as work incentive exemption	—30.00
	$450.00
	—150.00
	$300.00
3. Determine work-related expenses:	
Standard deduction	$ 50.00
Actual child care costs (assumed)	100.00
Work-related expense exemption	$150.00
	$300.00
	—150.00
Net Income	$150.00

Using this financial information for this hypothetical family, its "net income" would be $150. This figure would be used in other steps for purposes of determining an AFDC entitlement to determine the amount of payment the family would be entitled to receive. See *Villa v. Hall,* 6 Cal.3d 227 (1971); vacated and remanded, 406 U.S. 965; 7 Cal.3d 926 (1972).

Under these circumstances this hypothetical family would have a total work-incentive exemption of $330.00 [$30.00 + $150.00 (⅓ of the remainder) + $150.00 (work-related expenses = $330)].

At issue in this proceeding is the Federal Law relating to that portion of the calculation involving work-related expenses, exclusive of child care. In California as in Colorado a standard deduction was created to determine them. Its use in the formula for determining an AFDC entitlement is illustrated by the above example. No other element of the formula is at issue in this case.

Prior to the adoption of section 11451.6 of the California Welfare and Institutions Code, the amount to be applied to the above formula for work-related expenses depended upon an individual calculation for each family member earning

income that may vary each month. An amount was derived for each employed family member by the application of complex regulations. The amount to be deducted depended upon the circumstances of each case. Set forth in Appendix D are the regulations that governed these individual calculations.

On September 22, 1971, a class action was commenced in the Superior Court of California for Sacramento County in which the prayer for relief is that the court declare that section 11451.6 of the Welfare and Institutions Code and regulations adopted pursuant thereto to be in violation of the Social Security Act and denial of equal protection to respondents and their class. That case is entitled *Conover v. Hall.*

On the same date, the Superior Court issued an *ex parte* order entitled "Temporary Restraining Order and Order to Show Cause" which prohibited the respondents from the implementation of section 11451.6 of the California Welfare and Institutions Code.

On October 8, 1971, the trial court issued its opinion on request for issuance of preliminary injunction and notice of court ruling granting respondents' request for a preliminary injunction on the ground that section 11451.6 of the California Welfare and Institutions Code violated section 402(a)(7) of the Social Security Act (42 U.S.C. 602 (a)(7)). On the same day, the trial court issued its preliminary injunction.

On November 13, 1972, the Court of Appeal filed its opinion reversing the order of the trial court granting the Preliminary Injunction finding that section 11451.6 is not in conflict with 42 U.S.C. 602(a)(7). A Petition for Hearing was filed in the California Supreme Court by plaintiffs in that action and hearing was granted on January 17, 1973.

Minutes, California Supreme Court, 8 Cal. 3d (1) A copy of the opinion of the Court of Appeal is set forth as Appendix G (*Conover v. Hall,* 28 Cal. App. 3d 676 (Nov. 1972)).

Argument has not yet been scheduled by the California Supreme Court.

The adoption of section 11451.6 of the California Welfare and Institutions Code and the pendency of *Conover v. Hall* in the California courts upon the issue of whether the standard allowance created by section 11451.6 is in conflict with the Social Security Act gives the State of California a paramount interest in the determination by this court on the Petition for Certiorari filed in this action. California supports the Petition.

ARGUMENT

I. The Secretary of Health, Education and Welfare, the Person Charged with Administering the Social Security Act, Has Interpreted That Act to Permit States to Utilize a Standard Allowance for Work Expenses When Based Upon a Statistical Average.

California supports the arguments made by Petitioner that the Secretary of Health, Education and Welfare has consistently interpreted the Social Security Act to allow the States to utilize a standard allowance in determining work expenses. The Petitioner points out that the Colorado plan utilizing a standard allowance for work expenses exclusive of mandatory payroll deductions and child care costs was approved by the Secretary. Petition page 7.

While the Secretary has not approved the standard allowance set forth in section 11451.6 of the California Welfare and Institutions Code (Appendix A) and its implementing Regulations (Appendix C), the regional adminis-

trator expressed their approvability by a telegram dated October 4, 1971.[2]

The Regional Commissioner left open an approval as to the *amount* of the standard allowance but indicated a standard allowance for work expenses is permissible if properly substantiated.[3]

The acts of the Secretary in approving the Colorado plan and of the Regional Administrator in indicating the California plan is approvable is consistent with the earliest administrative interpretation given the Social Security Act by the Secretary. Section 402(a)(7) was added to the Social Security Act by the 1962 amendments. 42 U.S.C. 602(a)(7). Part IV of the Handbook of Public Assistance Administration at section 3140 was applicable to work expenses. Prior to the 1962 addition to the Social Security Act requiring that work expenses be considered rather than merely permitting their consideration,[4] a consolidated standard allowance was permitted for food, clothing and

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2. The telegram from the Regional Administrator was in response to the telegram from the California Director of Social Welfare dated October 1, 1971. The telegrams are set forth in the Appendix at B-1 and B-2 respectively.

3. The Regional Commissioner is the appropriate person to interpret State plan amendments on the basis of policy statements or precedents previously approved by the Administrator of the Social Security Act. 45 C.F.R. 201.3(a)-(c). The administrative interpretation placed upon the Social Security Act by HEW is clearly stated as interpreting 42 U.S.C. 602(a)(7) to allow standardization of work expenses. See brief filed *Adams v. Parham* (Civil Action No. 16041) in the United States District Court, Northern District of Georgia, Atlanta Division. A copy is appended hereto as appendix E. As the HEW amicus brief points out, the interpretation of 42 U.S.C. 602(a)(7) to permit standard allowances was in existence on September 26, 1969. Appendix E page 16.

4. See Senate Report No. 1589, June 14, 1962, published in the United States Code, Congressional and Administrative News, 87th Congress—Second Session, 1962, pages 1943-1983, at pages 1959-1960, indicating that the 1962 amendments would *require* the consideration of work expenses rather than *permit* their consideration.

incidentals. The 1957 version of the section is set forth in the appendix to the Petition at E-1. Section 3140 was amended to reflect the 1962 amendments to the Social Security Act and mandated the consideration of work expenses. Appendix to Petition at F-3. Yet elements of work expenses were still permitted to be consolidated and standardized:

"INTERPRETATION

"The provision for the consideration of expenses of earning income was included in the law to insure that all States will recognize work expenses in determining net income. Also, if work expenses are not considered by a State agency in its plan material, it has the effect of failing to provide an incentive for working since that portion of the family income spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter.

Increased food necessitated by greater activity, along with the additional clothing and its care, and better grooming necessitated in holding a job, *may be standardized* as accepted, common needs of all employed persons. Therefore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional cost of these three items—food, clothing, and personal incidentals—for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. This method is acceptable, whether the items of work expenses are included in a State's standard for requirements, or whether the agency uses the method of deduction of work expenses from earned income in arriving at the individual's net income from his employment.

"Items of work expenses must be allowed when there is determination that such expenses do, in fact, exist in the individual case. On the basis of a finding of the existence of expenses related to employment, money amounts for such expenses must be added to the individual's needs or deducted from his earned income in such a way as to assure that no duplication of items will exist."

(Appendix to Petition at F-2 and F-3) (Italics in original)

The California Plan included the standard allowance suggested by the revised section 3140. EAS 44-113.232. Appendix F hereto. *County of Alameda v. Carleson,* 5 Cal. 3d 730 (1971); appeal dismissed 406 U.S. 913 (1972).[5]

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5. In *County of Alameda v. Carleson, supra,* the standard allowance of EAS 44-113.232 was attacked by a county charging that it was improper as it granted a deduction for expenses that may not have been incurred and hence in violation of the Social Security Act. *County of Alameda v. Carleson, supra,* at 747. The regulations were held not to violate the Social Security Act and its implementing regulations. *County of Alameda v. Carleson, supra,* at 748. In dealing with the standard allowance the California Supreme Court commented in this language:

". . . Congress might well have concluded that the administrative costs of attempting to determine or review the reasonableness of any particular work-related expenditure outweighed the cost to the AFDC program of permitting the occasional deduction of excess expenses.[20]"

"[20]The foregoing reasoning would also sustain Carleson's standard monthly allowance for increase personal expenses attributable to employment. The administrative convenience afforded by a standard allowance in a reasonable amount provides justification for deviating from the general principle that only those expenses actually incurred may be deducted from income. (See *Rosado v. Wyman, supra,* 397 U.S. 397, 419 [25 L.Ed.2d 442, 459]; *Amos v. Engelman* (D.C.N.J. 1970) [C.C.H. Pov.L.Rptr., par. 11,983]; HEW Handbook of Public Assistance Administration, Part IV, § 3140.)"

The appeal taken from this decision was dismissed by this court as lacking a substantial Federal question. 406 U.S. 913. However, the standard allowance for work expenses was not involved in that appeal. In the Jurisdictional Statement dated December 15, 1971, filed by the County of Alameda, the following appears in footnote 1 at page 11:

As part of the decision to incorporate handbook material into regulation form, section 3140 of the handbook was repealed by handbook transmittal No. 149 dated March 18, 1969 (page 2, Appendix F hereto). The amicus curiae brief of the Department of Health, Education and Welfare in *Adams v. Parham* U.S. Dist. Ct., Northern District of Georgia, Atlanta Division, Civil Action No. 16041, points out that only mandatory provisions of the handbook were incorporated into regulation form. Appendix E at page 16 hereto. However, the Department of Health, Education and Welfare continued to interpret the Act to authorize the states to adopt a standard allowance for expenses. On September 26, 1969, the Department found it necessary to instruct the states on how to deal with the 1969 amendments to the Act in section 402(a)(8), 42 U.S.C. 602(a)(8)(ii). In so instructing the states the use of a standard allowance for work expenses was harmonized with these new provisions and appropriate instructions given. (Appendix 6 to Petition at G-2; Appendix E hereto at 16)

It is clear that even after section 3140 of the Handbook was repealed, the Department of Health, Education and

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Note 5, cont'd:

"1. In the Superior Court, appellants also urged that federal income tax withheld either not be allowed as a deduction, or that the income tax refunds be considered income—rather than personal property—upon receipt. Carleson has recently adopted this position in his new regulations, and no issue concerning his point is now presented. *In addition, in the Superior Court appellants urged that Carleson's standard deduction for work-related food expenses, clothing, and incidental expenses was contrary to federal law, in that those deductions were allowed regardless of a showing that the expenditures were actually made. Carleson has eliminated this deduction in his recent regulations, and in any case, it is now clear that a standard deduction for expenses is not per se illegal. Amos v. Engelman* (D.C.N.J. 1970), CCH Pov. L. Rptr., ¶ 11983, aff'd sub nom. *Engelman v. Amos*, November 9, 1971, 40 U.S. Law Week 3216." (Emphasis added.)

It is clear that the County of Alameda did not contend to this Court that the California Supreme Court improperly validated the standard allowance set forth in Regulation EAS 44-113.232.

Welfare is instructing the states on how to deal with a standard allowance for work expenses.

There can be no other conclusion but that, as stated in the Petition to this Court, since 1957 the Department of Health, Education and Welfare has consistently interpreted the Social Security Act to permit the consideration of work expenses by a standard allowance so long as that standard is based upon a fair averaging process and it consolidates all reasonably attributable expenses. Petition, page 11. The policy behind such an interpretation is expressed by the Department of Health, Education and Welfare in the brief filed in *Adams v. Parham,* Appendix E hereto, at 14-15:

> "Welfare agency workers have thus been freed from time-consuming, detailed determination of need and payment. Computation and payment processes have been automated to a degree not otherwise possible. The chances of error have been reduced. Recipients of assistance have gained greater certainty of the amount of the payment to which they are entitled. Need and payment actions have become more objective, with less room for play of subjective judgment by the agency worker. The agencies have been enabled to separate their income maintenance and social services functions, and to use income maintenance specialists, with suitable skills, under a new system that operates more efficiently and expeditiously. The statutory objectives of administrative efficiency and a uniform Statewide program in accordance with 42 U.S.C. 602 (a)(2) and (5) have been furthered."
>
> "In this context, the individualization of work expenses of recipients is an anachronism. This method involves all of the problems which as just described, are being overcome in regard to other aspects of the determination of need and payment. Payroll deductions vary with the amount of wages, and wages vary with the number of paydays in a month, the number of days the recipient worked, overtime, and many

other factors. Other work expense items, such as transportation and lunches, vary similarly with the number of days of work and the other factors which affect payroll deductions, and in addition they may vary according to any number of still other factors under an individualized computation, the amount of work expenses for each individual would likely be different every month. For the agency to obtain an adequate accounting of the individualized expenses, to process the changing amounts, to validate and audit, places a severe burden on administration of the program. Increasingly, agencies have neither the staff nor the capability for such an operation."

The California Legislature in including a standard work expense allowance as part of its Welfare Reform sought to extend the advantages gained by the narrower standard allowance approved by the California Supreme Court in *County of Alameda v. Carleson,* 5 Cal. 3d 730, *supra.* Such action would bring to California Welfare Administration the advantages outlined by the Department of Health, Education and Welfare in its Amicus Brief in *Adams v. Parham, supra* (Appendix E hereto).

Such action is consistent with the Social Security Act as interpreted by the Department of Health, Education and Welfare.

II. A Uniform Standard Allowance for Work Expenses Is to Be Distinguished from a Maximum Allowance for Such Expenses.

The Court of Appeals finds that a standard allowance for work expenses is equivalent to a maximum allowance when an individual's expenses exceed the standard allowance. The court states:

"The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence to this standard when a particular family's expenses of employment exceed the allowance. In such

cases, Colorado's standard allowance operates as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. § 602(a)(7). Williford v. Laupheimer, E.D. Penn., 311 F. Supp. 720 (three-judge court). Nevertheless, a reasonable interpretation of the statute permits "a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, *provided the allowance is adequate to cover all actual expenses.*" Amos v. Engleman, D.N.J., 333 F. Supp. 1109, 1119 (three-judge court), *modified on other grounds,* 404 U.S. 23. (Emphasis added.)"

Vialpando v. Shea, Appendix A to Petition for Certiorari p. A-6-7.

The distinction between the two techniques seems obvious. When a maximum is imposed, the individualized determination is made, but a fiscal limit is placed upon the absolute amount of expenses any individual may include in the grant determination. A standard allowance consolidates and averages work expenses across the universe of all families with work expenses. The result will be that each family will receive the average amount. While some families and individuals will be benefited and others will be affected adversely, all will receive an average amount and all will benefit from the savings which accrue from discontinuing the individualized determinations.[6]

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6. The Department of Health, Education and Welfare views it this way:

"HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary

The Court of Appeals refers to *Williford v. Laupheimer*, 311 Fed.Supp. 720 (E.D.Pa. 1969). That case dealt with Regulation 3234.1 of the Pennsylvania Department of Public Welfare which provided that a maximum deduction of fifty dollars will be allowed for work-related expenses in computing income and the grant allowance for AFDC. *Williford v. Laupheimer, supra,* 721. The Court finds that the imposition of a maximum deduction violated section 402(a)(7) of the Social Security Act (42 U.S.C. 602(a)(7)). Pennsylvania's only justification for the maximum appeared to be economic. *Williford v. Laupheimer, supra,* 722. The *Williford* case stands only for the proposition that the imposition of a maximum amount in the allowance of work expenses is not permitted. The Colorado system of utilizing a statistically based standard allowance is not the imposition of a maximum.

The Court of Appeals finds that it "operates" as a maximum for the failure to include an allowance for those expenses which are in excess of the standard, citing *Amos v. Engelman,* 333 Fed.Supp. 1109 (Three Judge Court convened in District Court for the District of New Jersey, 1970) (modified on other grounds, 404 U.S. 23). The *Amos* case is not support for the conversion of a statistically based standard allowance into the imposition of an impermissible maximum upon the work expense allowance. That court permits the use of a $50.00 standard allowance for "business" expenses if the standard is correctly composed. That is, that court stated that the standard allowance

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Note 6, cont'd:

ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred." Brief of the United States as amicus curiae to the Federal District Court in *Adams v. Parham,* United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041 (Appendix E at page 20).

must cover all business expenses in its composition. *Amos v. Engelman, supra,* at 1119. What the court is saying in *Amos v. Engelman, supra,* is just what the Department of Health, Education and Welfare said in the Brief Amicus Curiae in *Adams v. Parham,* United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041 (Appendix E attached). The Department of Health, Education and Welfare, as discussed in Part I, *supra,* has approved state plans containing a statistically supportable average allowance for work expenses. But the allowance must be statistically supportable. When the *Amos* court states ". . . provided the allowance is adequate to cover all actual expenses . . ." (*Amos v. Engelman, supra,* 1119), it is referring to the fact that the *standard* must be adequate. This is made quite clear by this language at page 1119:

> "There is nothing in this record to establish that $50 is an unreasonable amount for business expense or that the plaintiffs in this action or the persons they represent have incurred monthly business expenses in excess of $50. We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses.
>
> In *Rosado,* when the Supreme Court invalidated New York's regulation recomputing need in a manner which reduced the level of benefits in violation of 402(a) (23) it also stated: "We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items [in computing need] on the basis of statistical averages". 397 U.S. at 419, 90 S.Ct. at 1221, 25 L.Ed.2d 442. If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses.

> We therefore reject plaintiffs' contention on this point without precluding them from showing that the $50 deduction is unreasonable or inadequate."

The correct holding of *Amos v. Engelman, supra,* is that the Social Security Act does not prohibit the use of a standard deduction, but the *amount* utilized as a standard is to include all items of work expense in the development of the standard; hence the plaintiffs in that case are not precluded from showing that the standard did not include all items in its development. If such is the case, the standard allowance would then be "unreasonable or inadequate." *Amos v. Engelman, supra,* at 1119.

Amos v. Engelman, supra, does not support the proposition that a statistically based average for work expenses is converted into a maximum allowance because it applies the standard to all families including those with greater individual expenses as well as those with lesser expenses.

The construction that the Colorado allowance is a maximum is neither factually correct nor is it legally correct. On this basis alone this Court should grant the Petition for a Writ of Certiorari sought by Petitioners. The decision, if left to stand, could be considered to construe section 11451.6 of the California Welfare and Institutions Code and similar state plans from other states to be considered a maximum allowance and hence not valid.

As stated earlier in *Williford v. Laupheimer, supra,* 311 Fed.Supp. 720 (1969), the court found the imposition of a maximum limit upon work related expenses by Pennsylvania to be invalid. To the same effect is a decision by the Court of Appeals for the second circuit holding that the exclusion of specific work expenses from consideration is not permissible. *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W.,* 448 F.2d 209 (1971). These cases stand for the broad proposition that a State must consider

all items of work expense and cannot either exclude certain items or place an arbitrary fiscal limit upon their consideration. However, they do not otherwise deal with the manner by which all items are to be considered. The use of a statistical average to consider expenses by developing a standard allowance was neither before these courts nor is it inconsistent with these decisions. Moreover, this process has been approved by this Court as an appropriate tool for social security administrators (*Rosado v. Wyman,* 397 U.S. 397, 419 (1970)) and unless specifically prohibited by the Social Security Act, the discretion should be that of the States. See *Jefferson v. Hackney, supra,* 406 U.S. 535, 541 (1972).

This Court has specifically approved the use of consolidated statistically based standard allowances in Social Security Administration. *Rosado v. Wyman, supra,* at 419-420. While the factual base involved in *Rosado* was the New York need standard, the Court's comments on the use of statistical averages is not conceptually limited to that factual setting. It should be noted that the work expense calculation involves many items similar in nature to those which form the components of a need standard. The individual items required to be individually calculated under prior regulations include such things as food, clothing, transportation costs, union dues, various taxes, insurance and retirement benefits among others. See Rgulations EAS 44-113.23 and 44-114, Appendix D hereto. New York likewise computed the need standard on an individualized basis making individual calculations for food, clothing and other items identified as "special needs." *Rosado v. Wyman, supra,* at 416. A flat grant was established which made payments based upon the number of individuals in a household and special needs were consolidated into a $100.00 flat grant. *Rosado v. Wyman, supra,* at 416. At issue was com-

pliance with 42 U.S.C. 602(a)(23). This Court specifically held 42 U.S.C. 602(a)(23) does not prevent the use of statistical averaging to develop a flat grant for administrative efficiency. *Rosado v. Wyman, supra,* 397 U.S. 397, 417, 419-420. This Court was analyzing 42 U.S.C. 602(a)(23) to determine if that section prohibited the use of a statistically based flat grant. It found no prohibition in that section. The prohibition found in that section was that it prohibited the use of the flat grant as a guise to reduce the standard of need. *Rosado v. Wyman, supra,* at 419. This is precisely what the court said in *Amos v. Engelman,* supra, 333 Fed. Supp. 1109, 1119, and is precisely what the Department of Health, Education and Welfare is saying in its amicus brief to *Adams v. Parham,* Appendix E hereto. The use of a standard allowance cannot be used as a device to fail to take in account work expenses. That is, in developing the standard, all items must be included in the statistical base which are reasonably attributable to the earning of income. The exclusion of items from the work expense base is the same as the exclusion of items from the base under 42 U.S.C. 602(a)(23).[7]

If there remained any question, the most recent decision of this Court in the area of welfare grant computation should put the issue to rest. In *Jefferson v. Hackney, supra,* 406 U.S. 535, it is pointed out that in determining whether a State enactment is in conflict with the Social Security Act, the court will look to see if the State act violates any specific provision of the Social Security Act. If not, the State legislative decisions will not be interfered with. *Jef-*

7. The plan approval process of the Department of Health, Education and Welfare requires that the states justify the amount of the standard allowance to insure this principle is followed. See the amicus brief of the Department, Appendix E hereto, at pages 21-25. See also the telegram of the Regional Administrator commenting on the California Plan. Appendix B-2 hereto.

ferson v. Hackney, supra, 406 U.S. 535, at 541. This is in recognition that there may be more than one permissible way to achieve the goals of the Social Security Act. See *Jefferson v. Hackney, supra,* at 546.

No specific provision of the Social Security Act prohibits the use of a standard allowance in considering work expenses under section 402(a)(7) of the Social Security Act. 42 U.S.C. 602(a)(7). The option to utilize that method is given to the states by long-standing valid policy considerations of the Department of Health, Education and Welfare. The Court of Appeals incorrectly applied existing cases and the statutory history of the Social Security Act to find that a standard allowance for work expenses operates as a maximum upon the consideration of work expenses and is thus in violation of the Social Security Act.

III. The Construction Placed Upon the Social Security Act by the Opinions of the Lower Courts Seriously Hinders the Effective Administration of the Social Security Act as It Fails to Recognize That the States Have Placed Great Reliance on the Long-Standing Interpretation Given the Social Security Act by the Secretary and Its Plan Approval Under the Act.

The Petition to this Court argues that the interpretation given the Social Security Act by the opinions of the lower courts in this case and the decision of those courts that a standard alowance for work expenses violates the Social Security Act seriously hinders the effective administration of that act. The State of California supports that contention and the history of the California provision for work expences graphically illustrates the effect of reliance upon the Secretary's long-standing interpretation of the Social Security Act.

As discussed supra at pp. 5-6 and 10, California followed the lead of the Secretary in permitting a standard allowance for those items of work expenses denominated food, cloth-

ing and incidentals. State Regulation EAS 44-133.232 authorized such a standard allowance[8] pursuant to instructions set forth in the Federal Handbook at section 3140 (Appendix F to Petition for Certiorari before this court in this case). Recognizing the administrative in efficiency in the cumbersome determinations required by the complex set of Regulations applicable to determinations of other work expenses the California Legislature sought to extend the standard allowance concept to other work expense allowances. This section, 11451.6 of the California Welfare and Institutions Code, was adopted as part of a general Legislative Scheme to reform welfare administration and payments in California. Benefit increases were made to recipients by increasing some payment levels such as the maximum allowance under section 11450 of the California Welfare and Institutions Code for AFDC recipients. These increases were partly made possible because of simplified administration such as that sought in the use of a standard allowance for work expenses rather than the complex determinations required under the prior regulations. At the time the California Legislature was considering its Welfare Reform Act of 1971 it was aware that the Secretary had uniformly interpreted the Social Security Act to permit such standard allowances and uniformly approved plans which included such provisions for considering work expenses. See State Letter dated September 26, 1969, from the Assistance Payments Administration to all state agencies, Appendix G to the Petition to this Court in this case. The Secretary has power to initiate procedings to conform state plans to Federal Law under 45 C.F.R. 201.6 following the procedures set forth in 45 C.F.R. 213.1 through 213.33. While the Secretary initiated such proceedings against

8. This Regulation is set forth as Appendix D.

states which failed to include all items of work expenses in the allowance[9] it had not initiated such proceedings against states which included a properly statistically based allowance applied in a uniform manner.

The State of California recognizes the reluctance of this Court to become involved in detailed questions of Welfare Administration. As Justice Black noted, with the concur-

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9. Connecticut modified its State plan to exclude specific items of work expense from consideration.

> ". . . At the hearing, Connecticut stipulated that, aside from certain child care payments under AFDC, it deducted as work-related expenses only specified payroll deductions, i.e., withholding tax, social security tax, mandatory group life insurance premiums, mandatory retirement plan payments, mandatory union dues, Blue Cross and other hospital insurance for persons below 65 years of age. See Conn.Gen.Stat. § 17-2; I Connecticut Welfare Manual, Chpt. 3, § 332.32. Since the hearing, Connecticut has agreed to deduct transportation costs to and from work." *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W.*, 448 Fed.2d 209, at 216 (2nd Cir., 1971).

A conformity proceeding was held. The court characterized the issue in that proceeding in this language:

> "The evidence presented at the administrative hearing showed that Connecticut *excludes such expenses as additional clothing necessary to employment, cost of better grooming and other personal incidentals, cost of tools, materials, special uniforms and transportation to call on customers.*" (Footnote omitted.) *Connecticut St. Dept. of Pub. W. v. Department of H., E. & W., supra,* at 217. (Emphasis added.)

The Court of Appeal affirmed the decision of the Department of Health, Education and Welfare.

> "Therefore, the Administrator's conclusion that Connecticut's limitation on the types of deductible work-related expenses is inconsistent with federal law is clearly supported by substantial evidence, and thus is conclusive. 10 42 U.S.C. § 1316(a)(4); Gardner v. Alabama Department of Pensions and Security, 385 F.2d 804 (5th Cir. 1967), cert. denied, 389 U.S. 1046, 88 S.Ct. 773, 19 L.Ed.2d 839 (1968). As we find that the regulation is a reasonable interpretation of the Act, we affirm the Secretary's order on the deductible work-related expense issue." (Footnote omitted.) *Connecticut St. Dept. of Pub. W. v. Department of H. E. & W., supra,* at 217.

rence of the Chief Justice, in the dissent to *Rosado v. Wyman*, 397 U.S. 397, at 431 (1970):

> "The Court today holds that the "District Court correctly exercised its discretion by proceeding to the merits" of petitioners' claim that the federal and state statutes are inconsistent. *Ante*, at 401. The Court reaches this conclusion despite the fact that the determination whether a State is following the federal AFDC requirements is clearly vested in the first instance not in the federal courts but in the Department of Health, Education, and Welfare (HEW); despite the fact that at the very moment the District Court was deciding the merits of petitioners' claim HEW was performing its statutory duty of reviewing the New York legislation to determine if it was at odds with § 402(a)(23); and despite the fact that if HEW had been given enough time to make a decision with regard to the New York legislation, its decision might have obviated the need for this and perhaps many other lawsuits. I regret that I cannot join an opinion which fails to give due consideration to the unmistakable intent of the Social Security Act to give HEW primary jurisdiction over these highly technical and difficult welfare questions, which affirms what is to me a clear abuse of discretion by the District Court, and which plunges this Court and other federal courts into an ever-increasing and unnecessary involvement in the administration of the Nation's categorical assistance programs administered by the States.[1] (footnote eliminated)"

These comments illustrate the dilemma which faces the states and this case in graphic terms for Colorado and for California identifies the results of choosing one horn of the dilemma rather than another. The question then posed is to what extent may a state rely upon a long-standing interpretation of the Social Security Act by the Secretary in fashioning its state plan and to what extent is plan approval by the Secretary meaningful to the States. It was not meaningful

to Colorado in this case. A similar fate appears possible for California's plan.

One of the more serious aspects of this case is the extent to which the primary jurisdiction to interpret and apply the Social Security Act will be recognized by the Federal and State Courts where claims of recipients that state action is not in conformity with Federal Law. If the opinion of the Court of Appeals is to stand, the Federal District Courts can expect additional attacks upon established interpretations of the Social Security Act by the Secretary.

This Court should reinforce its decisions which emphasize that the long-standing interpretations of the Social Security Act by the officers charged with its administration are to be given weight and deference. *Udall v. Tallman,* 380 U.S. 1 (1965); *Lewis v. Martin,* 397 U.S. 552, 559 (1970); *U.S. v. City of Chicago,* 400 U.S. 8 (1970).

That emphasis is necessary to assure the states that it can rely upon such actions by the Secretary as plan approval under 45 C.F.R. 201.3 and instructions such as those contained in the letter of September 26, 1969, to all state agencies (Appendix G to the Petition). The opinion of the lower courts in this case and the litigation that has occurred or is now in progress in this area of Social Security Administration[10] illustrates well that the lower courts failed to correctly apply the decisions establishing this principle.

Joining the State of California in this amicus curiae brief are the States of Arizona, Connecticut, Illinois and Nebraska.

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10. Some of the cases are set out in footnote 5 to the Petition.

Respectfully submitted,

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Appendix A

Section 11451.6 of the California Welfare and Institutions Code.

11451.6. Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967).

Appendix B

1. Telegram from Robert B. Carleson, Director of Social Welfare, to Mr. Eugene Rubel, Assistant Administrator, Social & Rehabilitation Service, dated October 1, 1971.

October 1, 1971
TELEGRAM

Mr. Eugene Rubel
Assistant Administrator
Social & Rehabilitation Service
U. S. Department of Health, Education, and Welfare
330 Independence Avenue, S. W.
Washington, D. C. 20201

We are receiving inquiries as to whether the requirements of 42 U.S.C. 602(a)(7) and 45 C.F.R. 233.20(a)(3)(iv)(a) and 45 C.F.R. 233.20(a)(7)(1) would permit the State of California to develop a statewide standard allowance for all work-related expenses which would apply a flat sum for all work-related expenses against income in accordance with other requirements of federal law.

Would you advise me whether there is any provision of federal law which in the opinion of the Department of Health, Education and Welfare would preclude such a standard allowance.

ROBERT B. CARLESON
Director of Social Welfare

RBC:mc/bh

2. Telegram from Philip Schafer, Regional Commissioner, to Robert Carleson dated October 4, 1971.

REURTEL to Rubel 10-1-71, cited sections Social Security Act and HEW regulations requires state AFDC plan provide that state agency in determining need take into consideration any expenses reasonably attributable to earning

income. We interpret act and regulations to permit states, for purposes of simple and efficient administration, to establish justifiable standard allowance for all such expenses, not including child care, to be uniformally applied in all situations with earned income. State must substantiate that amount fixed as standard allowance covers all such personal and nonpersonal expenses reasonably attributable to earning income, for example, through factual study on adequate sample basis or from family living studies conducted by U. S. Bureau of Labor Statistics.

Philip Schafer
Regional Commissioner

Transcribed by telephone 10-4-71
cck

Appendix C

Excerpts from Regulation EAS 44-113 Applicable to Work Expenses Effective October 1, 1971.

44-113 NET INCOME (Continued)

.23 *Work Expenses—Definitions*

.231 *Personal Expenses*—Expenses which are common to all persons who have earned income (either as an employee or from self-employment). Such expenses include costs of child care, minimum amounts involuntarily withheld by the employer (i.e., income tax, social security, etc.), and transportation to and from the job.

.232 *Nonpersonal Expenses*—Expenses which are mandatory to retain a specific job (either as an employee or from self-employment). Such expenses include costs of transportation to call on customers, special tools, special material or clothing, and union dues.

233. *Business Expenses*—Expenses incurred in the production of income when self-employed.

.24 *Work Expenses—Amounts Allowable Per Month*

.241 All items listed in 44-113.23, *except child care and business expenses*—A standard deduction shall be allowed for these items according to the number of days worked during the month as follows:

1 through 10 days	$25.00
over 10 days	$50.00

.242 *Child Care*—The reasonable and necessary cost of obtaining such care shall be allowed when the county determines that adequate care for the recipient's children cannot be provided during

his working hours by nonworking persons in his household. However, the amount allowed shall not exceed the actual cost of securing such care through a day care facility meeting the standards outlined in Chapter 30-350 (Child Care Services) when the county determines that such a facility is available to the recipient.

.243 *Business Expenses*—The full cost of expenses which are incurred in the production of income. The recipient must bear the full burden of proof for justifying the existence of and need for any expense reimbursed under this classification.

.25 *Other Deductions from Net Income*

In addition to the deductions described above, deductions for other expenses of persons with income from any source, shall be made as follows:

Appendix D

Excerpts from Regulations EAS 44-113 and EAS 44-114 Applicable to Work Expenses in Effect Prior to October 1, 1971.

44-113 NET INCOME (Continued)

.23 *Expenses of Earnings—AFDC*

In order that the use of family income for necessary expenses to retain employment will not reduce the money available to meet basic and special needs, such expenses shall be deducted from nonexempt earnings as follows: (See Section 44-111.23 for exemption to be applied against earned income.)

.231 Involuntary deductions made by the employer over which the employee has no control.

.232 Expenses for additional food, clothing and personal incidentals, allowed as a standard allowance according to the number of working days employed during the months, as follows:

1 through 5 days	$ 6.00
6 through 10 days	$12.00
11 through 15 days	$18.00
Over 15 days	$25.00

.233 The actual cost of other expenses which are mandatory to retain employment. Examples are:

a. Transportation to and from the job and on the job if not reimbursed by the employer, subject to conditions and limitations in Section 44-114.

b. Tools and licenses.

c. Dues to unions or similar assessments which are a condition of employment.

d. Necessary job-related educational or training expenses.

e. Child care, when the caretaker is employed.

f. Special safety devices not furnished by the employer.

g. Telephone service required in connection with employment.

.234 Expenses of earnings do not include items often deducted at the request of the employee but not mandatory to retain employment. Examples are:

a. Credit union shares, savings bonds, voluntary retirement, or elective profit sharing programs.

b. Elective health insurance.

c. Charitable contributions.

d. Dues to organizations where membership is not a prerequisite to employment.

e. Deductions for payments on consumer and other loans (see Section 44-113.2 regarding garnishments, etc.

.235 When earnings are from self-employment or operation of a business, the expenses in Items .232 and .233 are deducted with all other normal items of expense incidental to receipt of the income. However, principal payments are not allowed except for tools and equipment essential to the employment.

44-114 DETERMINATION OF WORK RELATED TRANSPORTATION EXPENSES

Expense for transportation to be allowed in determining net income from earnings shall be related to the most feasible means available to the individual recipient, as determined by the county welfare department. Such factors as distance from the job, hours worked, availability and accessibility to public transportation, child care arrangements, and job requirements must be considered in making a decision concerning the most feasible means of transportation.

.1 *Transportation by Common Carrier*

Average monthly costs of transportation by common carrier shall be allowed as an expense of employment.

.2 *Transportation by Private Vehicle*

The cost of transportation by private vehicle shall be allowed when transportation by private vehicle is the most feasible means available. The amount allowed shall reimburse the recipient for actual costs of operating the vehicle and, if necessary, the purchase of an appropriate vehicle, subject to conditions and limits specified in Section 44-114.2 and not to exceed the overall maximum in Section 44-114.4.

.21 Basic operating and maintenance costs for gasoline, oil, normal lubrication, tires and minor repairs shall be the amount as shown on the chart in Section 44-114.221.

.211 *Monthly Operating and Maintenance Cost*

Miles traveled per month	Allowance at rate of 4 cents per mile
Less than 175	$ 6.00
175- 224	8.00
225- 274	10.00
275- 324	12.00
325- 374	14.00
375- 424	16.00
425- 474	18.00
475- 524	20.00
525- 574	22.00
575- 624	24.00
625- 674	26.00
675- 724	28.00
725- 774	30.00
775- 824	32.00
825- 874	34.00
875- 924	36.00
925- 974	38.00
975-1,024	40.00
	Add
For each additional 50 miles	$ 2.00

.22 Other esential costs shall be allowed:

.221 When transportation is an expense of employment, as a flat amount of $25 per month; or

.222 When transportation is a service-connected expense or a special need, either as a flat amount of $25 per month, or as actually needed up to a maximum of $25 per month proratable on a monthly basis to enable the actual cost to be met. The county shall determine the method of payment, taking into consideration the preference of the recipient, if feasible, and the practicality of repair in relation to the value of the vehicle or the cost of its replacement.

.223 For purposes of this section, examples of "other essential costs" are:

a. The cost of replacement of adequate battery, generator, brakes and other items essential to safe and practical operation, including full amount for cost of repairs when the cost of repairs during the month exceeds $5.

b. The cost of the vehicle registration and license fee.

c. The cost of premiums for minimum public liability and property damage insurance as required for the recipient or operator of the vehicle if other than the recipient.

d. The cost of parking lot fees.

.23 The cost of purchasing a vehicle shall be allowed subject to the following conditions:

.231 The total amount allowed for monthly or other payments on the purchase price of a vehicle, exclusive of the costs enumerated in 44-114.232, shall not exceed $770. This amount shall include the trade-in allowance for the vehicle being replaced.

.232 The amount allowed for the purchase of a vehicle, in addition to the purchase price, shall include the actual cost to the recipient of sales tax, transfer fees, contract service charges and initial insurance premium if required.

The county welfare department shall take appropriate action (a) to encourage recipients who must purchase a vehicle while in receipt of aid to do business with reputable dealers, and (b) to offer such recipients a written guide or counseling service on what to look for when buying a vehicle.

.3 *Transportation by Means Other Than Common Carrier or Own Vehicle*

Average monthly costs of transportation by means other than common carrier or own vehicle such as a car pool, relative or neighbor, shall be allowed as an expense of employment.

.4 *Maximum Allowance*

The total amount allowed for transportation, exclusive of operation and maintenance (Section 44-114.21) shall not exceed $75 per month.

.5 *Implementation*

.51 The provisions of Section 44-114 shall be implemented as soon as fiscally feasible after the effective date of the regulations and shall be fully operative for all cases with transportation expenses by not later than July 1, 1970.

.52 The dollar limitations in Sections 44-114.22, 44-114.231 and 44-114.4 shall not be applicable with respect to obligations and agreements incurred and made by any county welfare department with a recipient before the effective date of these regulations or their implementation by the county currently responsible for the payment of aid.

Appendix E

Brief of the United States as Amicus Curiae in Adams v. Parham, United States District Court, Northern District of Georgia, Atlanta Division, Civil Action No. 16041, and its Appendix A (letter from Stephen P. Simonds, Commissioner, Assistance Payments Administration, Department of Health, Education, and Welfare, to State Agencies Administering Approved Public Assistance Plans dated September 26, 1969) (excluding conversion tables).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 16041

Christine Adams, et al.
Plaintiffs,

vs.

T. M. Parham,
Defendant.

BRIEF OF THE UNITED STATES AS AMICUS CURIAE

This is an action challenging Georgia's method of implementing section 402(a)(7) of the Social Security Act, 42 U.S.C. 602(a)(7), under the State's program of Aid to Families with Dependent Children (AFDC), established pursuant to Title IV of the Act, 42 U.S.C. 601 *et seq.* 42 U.S.C. 602(a)(7) requires that in determining need for assistance under Title IV, a State must deduct from income ". . .any expenses reasonably attributable to the earning of any such income. . .".

Plaintiff Christine Adams is a former AFDC recipient who has become ineligible for assistance under the Georgia AFDC program as a result of the State's recently amended

policy on computing the amount of deductible work expenses. Prior to the amendment of this policy in December 1971, the Georgia AFDC plan provided that such deductions for any recipient would be determined by subtracting from total income a flat $25 amount plus mandatory payroll deductions[1] and child care or attendant expenses. Under this formula plaintiff Adams and her minor child were eligible for and received monthly AFDC benefits in the amount of $82. By virtue of her eligibility for these payments, plaintiff Adams and her child were also deemed eligible for medical assistance (Medicaid) furnished pursuant to Georgia's program established under Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.* On December 1,[2] the State changed its policy regarding computation of work expenses by increasing the flat amount from $25 to $35 and by eliminating payroll deductions as a separate deductible category. The cost of child care remains a separately deductible work expense item under the Georgia program. In plaintiff Adams' case, the effect of this policy change was to decrease her work expense deduction; this decrease resulted in a net income figure which exceeded the State's standard of need and plaintiff and her child consequently became ineligible for continued AFDC and Medicaid benefits. Plaintiff Edith Abrams is an AFDC recipient whose grant for herself and her five minor children was reduced from $112 to $85 on December 1, 1971 as a result of the new Georgia work expense deduction policy. For reasons which are not entirely clear from her complaint, plaintiff Abrams' grant will be further reduced to $71 on February 1.

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1. Payroll deductions include such items as income tax deductions, OASDI contributions, and union dues.

2. This policy change has not been approved by HEW for reasons discussed below.

This case raises two main questions involving interpretation of Title IV of the Social Security Act: first, whether it is permissible for a State to use a flat amount for determining the work expenses required to be deducted under Title IV and, second, if so, whether the particular figure used by Georgia as its standard work expense deduction is acceptable under Title IV.

I. FOR PURPOSES OF DETERMINING THE AMOUNT OF WORK EXPENSES DEDUCTIBLE PURSUANT TO 42 U.S.C. 602(a)(7), HEW RECOGNIZES USE BY A STATE OF EITHER AN ITEMIZATION OF ACTUAL EXPENSES INCURRED BY EACH INDIVIDUAL OR A CONSOLIDATED AMOUNT WHICH FAIRLY REPRESENTS WORK EXPENSES ON AN AVERAGE BASIS.

42 U.S.C. 602(a)(7) requires that, in determining need for AFDC, a State must deduct from income ". . .any expenses reasonably attributable to the earning of any such income. . .". This section of the brief examines the question of whether, in principle, the States, in responding to the Federal statute and the Federal implementing regulations, may use flat amounts for work expenses, as HEW has advised, or whether they must determine the actual amount for each individual for each item of work expense each month. This inquiry should be distinguished from the question, which will be discussed separately below, as to which items of work expenses must be taken into account as reasonably attributable to the earning of income. We assume here that the State does take all pertinent items into account, whether it uses the flat amount method or the individualized computation method or a combination of the two methods. Also left for later, separate discussion is the question of what would constitute an adequate flat

amount in Georgia today. In short, we look here only to whether a flat amount may be used, assuming it is done fairly.

By way of background, over the past several years there have been intensive efforts to simplify and streamline the administration of the public assistance programs. In most States, the standards of assistance—which are used in determining the need of applicants and recipients, and the amount of the assistance payment, 45 CFR 233.20(a)(2)—have been restructured. The trend has been away from individualization and toward the use of a flat amount for a family of a given size. For instance, in some States different amounts for food for children of different ages have been replaced by a single amount for food. As another example, many special needs, i.e., items that are needed by some but not all families or individuals, have been discontinued and replaced by an equivalent increase in the average assistance payment to all families.

Welfare agency workers have thus been freed from time-consuming, detailed determinations of need and payment. Computation and payment processes have been automated to a degree not otherwise possible. The chances of error have been reduced. Recipients of assistance have gained greater certainty of the amount of the payment to which they are entitled. Need and payment actions have become more objective, with less room for play of subjective judgment by the agency worker. The agencies have been enabled to separate their income maintenance and social services functions, and to use income maintenance specialists, with suitable skills, under a new system that operates more efficiently and expeditiously. The statutory objectives of administrative efficiency and a uniform Statewide program in accordance with 42 U.S.C. 602(a)(2) and (5) have been furthered.

In this context, the individualization of work expenses of recipients is an anachronism. This method involves all of the problems which, as just described, are being overcome in regard to other aspects of the determination of need and payment. Payroll deductions vary with the amount of wages, and wages vary with the number of paydays in a month, the number of days the recipient worked, overtime, and many other factors. Other work expense items, such as transportation and lunches, vary similarly with the number of days of work and the other factors which affect payroll deductions, and in addition they may vary according to any number of still other factors. Under an individualized computation, the amount of work expenses for each individual would likely be different every month. For the agency to obtain an adequate accounting of the individualized expenses, to process the changing amounts, to validate and audit, places a severe burden on administration of the program. Increasingly, agencies have neither the staff nor the capability for such an operation.

HEW has accordingly permitted the States to use flat amounts for work expenses. In an evolving situation, where States are at different places in reconstructing their need determination and payment procedures, they have been allowed a choice of methods. They may individualize work expenses. They may use a flat amount for specific items of work expenses, or for groups of items, or for all items.

The Social Security Act and the implementing HEW regulations are silent as to the method to be used. They neither require nor prohibit any particular method. However, the provisions of the Handbook of Public Assistance Administration, which preceded the regulations, stated:

> "Increased food necessitated by greater activity, along with the additional clothing and its care, and better grooming necessitated in holding a job, may be standardized as accepted, common needs of all employed

persons. Therefore, to simplify administration, a State public assistance agency may establish a reasonable money amount to represent the combined additional costs of these three items—food, clothing, and personal incidentals—for all employed persons. The State agency should be in a position to support the reasonableness of any money amount established for these items within the general framework of its assistance standards and its knowledge and experience with respect to work expenses of recipients. . . ." Handbook of Public Assistance Administration, IV-3140.1.

These Handbook provisions, not being mandatory, were not included in the regulations, and were vacated. Nevertheless, the option of using flat amounts was known to all of the States and HEW has continued to permit it. While the Handbook spoke specifically to food, clothing, and personal incidentals, States have been permitted to use flat amounts for other items, or for all items. The principle is the same whatever the item or items. If considerations of proper and efficient program administration can allow for use of flat amounts in any case or for any item, then the extension of the method to other items or to all items does not raise any different issue. The only question then is one of reasonableness of the size of the flat amount in relation to the items covered, which will be discussed separately below.

A letter from HEW to all State agencies on September 26, 1969, after the regulations on work expenses had been issued, clearly reflects the HEW position and advice that States may use a flat amount for all work expenses. HEW provided tables to assist the States in applying the mandatory disregard of $30 plus ⅓ of the remainder of an AFDC family's earned income pursuant to 42 U.S.C. 602(a)(8). States were further informed of how the tables could be adapted to account also for work expenses if the

State used a flat amount for all work expenses. The example given on page 1 of the State letter, set forth as Appendix A to this brief, is

> "A situation where a State agency has an established standard of $50 per month for all mandatory payroll expenses and all occupational expenses."

The propriety of using flat amounts under the neutral language of the Social Security Act has been clearly established by the U. S. Supreme Court in *Rosado v. Wyman*, 397 U.S. 397 (1970). That case involved the requirement under section 402(a)(23) of the Social Security Act that States must make a cost-of-living adjustment of their standards of assistance. As already suggested, the items in a State's standard of assistance are usually even more numerous and varied than the items of work expense. Moreover, New York had consolidated its standards, changing from individualized computations to flat amounts, and eliminating certain special needs. The effect was similar to using a flat amount for work expenses instead of making individualized determinations.[3] The Court concluded that New York had in fact impermissibly lowered its standards of assistance by eliminating items of need without corresponding adjustments in the new flat amounts. However, the Court's opinion carefully pointed out that the principle of consolidation and averaging was completely acceptable:

> ". . . . We do not, of course, hold that New York may not, consistently with the federal statutes, consolidate

3. To use a hypothetical example, suppose that a State recognized the special need of a handicapped person for an attendant. If the cost were $200 per month and one individual in 100 needed an attendant, this special need could be eliminated and replaced by adding $2 per month to the standard of assistance for all individuals. Thereafter, the one individual needing an attendant and the 99 individuals who do not need an attendant would each receive $2 per month. This is certainly a much more extreme form of averaging than is likely in respect to work expenses.

items on the basis of statistical averages. Obviously such averaging may affect some families adversely and benefit others. Moreover, it is conceivable that the net payout, assuming no change in the level of benefits, may be somewhat less under a streamlined program. Providing all factors in the old equation are accounted for and fairly priced and providing the consolidation on a statistical basis reflects a fair averaging, a State may, of course, consistently with § 402 redefine its method for determining need. A State may, moreover, as we have noted, accommodate any increases in its standard by reason of 'cost-of-living' factors to its budget by reducing its level of benefits. What is at the heart of this dispute is the elimination of special grants in the New York program, not the system of maximum grants based on average age. Lest there be uncertainty we also reiterate that New York is not foreclosed from accounting for basic and recurring items of need formerly subsumed in the special grant category by an averaging system like that adopted in the 1968 New York City experiment with cyclical grants." 397 U.S. 397, at 419.

This analysis applies with equal cogency to consolidation and averaging of work expenses. The result will be that some individuals and families will be benefited, and others affected adversely. Items of great expense for some individuals and no expense for others will be covered by an average amount for all. But if all the items are accounted for and fairly priced and the averaging is fair, the consolidation is acceptable. The individual plaintiffs in the present case may be among those affected adversely, but if the process is fair for the universe of individuals with work expenses, taken as a whole, the teaching of *Rosado* is that the method and its results must be upheld.

The several cases in district courts dealing with work expenses confirm this conclusion. The only Federal district court decision, dealing with the acceptability of an average

work expense deduction seems to approve the use of that method for calculating work deductions. In *Amos v. Engelman,* CCH Pov. L. Rep. ¶ 11,983 (D.N.J. 1970), aff'd. per curiam, 92 S. Ct. 181 (November 17, 1971), a three-judge Federal court upheld New Jersey's provision for a flat $50 work expense allowance.[4] Noting that nothing in the record indicated that the $50 figure was unreasonable or insufficient to cover plaintiffs' actual work expenses, the court stated:

> ". . . We do not consider that it is inconsistent with the statute for a state to use a standard deduction for business expenses in the interest of efficient administration of the program, provided the allowance is adequate to cover all actual expenses."

Citing *Rosado,* the court analogized averaging to determine a need standard with averaging to ascertain the work deduction figure and found that:

> ". . . If a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses."

Plaintiffs have cited *Williford v. Laupheimer,* 311 F. Supp. 720 (E.D. Penn. 1969), as authority for the proposition that the only method of treating work deductions which comports with Title IV is the method of deducting actual expenses as incurred. We submit, however, that the decision in that case does not hold that use of a flat average amount is unacceptable. In *Williford,* the court considered Pennsylvania's policy as applying a maximum limit to the amount of work expense deductions, without discussing the permissibility of use of a flat amount designed to cover all actual expenses. The court invalidated Pennsylvania's pol-

4. New Jersey did not include either mandatory payroll deductions or child care costs in the $50 figure; those items were deducted separately and apparently on the basis of actual expenses.

icy on the grounds that it was inconsistent with 42 U.S.C. 602(a)(7), because it applied an arbitrary limitation on the deductibility of expenses contrary to the statutory provision that any expenses reasonably related to employment be deducted.[5]

HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred. Thus, the *Laupheimer* holding is not at odds with *Engelman* nor with HEW policy.

Likewise, the holding in *Michigan Welfare Rights Organization v. Houston,* Civil Action No. 35429, (E.D. Mich. April 30, 1971) is not inconsistent with *Engelman* nor with HEW policy. That case, like *Williford,* also involved a maximum. Moreover, under the court's order, the State was required to implement a specific modification of its policy accepted by HEW. Under this resolution of the case, Michigan recognized income taxes and social security taxes on an individualized basis and also used a flat amount of $40 per month for other work expenses. Thus, Michigan

5. Pennsylvania in that case had reduced the $120.40 amount plaintiff had spent for transportation and child-care to a $50 maximum deduction.

replaced its former maximum with a flat amount, representing an average allowance for work expenses other than payroll deductions. As resolved, the case clearly supports the use of flat amounts for work expenses.

Other cases cited by plaintiffs are patently distinguishable. *Olsen v. Child,* CCH Pov. L. Rep. ¶ 13,201, held that child care expenses could not be omitted from consideration. *Connecticut State Dept. of Public Walfare v. HEW,* 448 F. 2d 209 (2 Cir. 1971), held that certain other expense items had been omitted. However, these results do not go to the acceptability of use of flat amounts for work expenses, provided all items are considered.

In sum, the use of flat amounts for work expenses is consistent with the Social Security Act, the HEW regulations, the decided cases, State practice, and current developments to improve the administration of the public assistance programs.

II. FOR HEW APPROVAL, A FLAT AMOUNT FOR WORK EXPENSES MUST REPRESENT A FAIR AVERAGING OF THE AMOUNTS INCURRED BY INDIVIDUALS FOR THE PERTINENT ITEMS.

Applying the *Rosado* rule to work expenses, a flat amount may be used if all pertinent items are accounted for, if they are fairly priced, and if the consolidation on a statistical basis reflects a fair averaging. This section of the brief examines these conditions in the context of Georgia's policy which is at issue in the present case.

Georgia has a flat amount of $35 for all items of work expense other than child care. This amount, then, must, in the words of 42 U.S.C. 602(a)(7), cover "any expenses reasonably attributable" to the earning of income (other than costs of child care which Georgia considers separately). What, specifically, are these items? The Social Security Act is not specific. The HEW regulations which

directly reflect the statute merely repeat the statutory words. Thus, 45 CFR 233.20(a)(3)(iv)(a) requires that a State plan must

> "Provide that, in determining the availability of income and resources, the following will not be included as income:
>
> (a) Income equal to expenses reasonably attributable to the earning of income; . . ."[6]

The legislative history of the work expense provision is no more precise. However, in the course of defining "earned income," the HEW regulations give some examples which are pertinent here.

> "With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers." 45 CFR 233.20(a)(6)(iv).

In general, States must consider at least those items of work expense which are referred to in the definition of "earned income" in the HEW regulations. States must also consider other mandatory payroll deductions, e.g., social

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6. In prescribing a method for disregarding earned income, e.g., the provision in 42 U.S.C. 602(a)(8) for disregard of $30 plus ⅓ of the remainder of a family's earned income per month, the HEW regulations specify that the disregard is to be applied to gross income," and all work expenses, personal and non-personal, will then be deducted." 45 CFR 233.20(a)(7)(i). Under earlier rules, certain work expenses were deducted from gross income, applicable disregards were then deducted, and then other work expenses were deducted. The current regulation emphasizes that disregards are deducted first, then all work expenses are deducted. The use of the word "all" at this point is not intended to change in any way the provision in the statute and elsewhere in the regulations (see 45 CFR 233.20(a)(3)(iv)(a)) that the work expenses to be considered are "any expenses reasonably attributable" to the earning of income.

security tax deductions and mandatory deductions for union dues. States are given latitude on considering other items. For instance, a State may also choose to cover additional costs of food, clothing and personal incidentals, which are referred to in the superseded Handbook provision, quoted above, and which partially overlap the mandatory "lunches" item in the current HEW regulation on "earned income," also quoted above. In dealing with items of this type, there is room for difference of opinion as to whether they are "reasonably attributable" to the earning of income, or whether they represent an individual's choice of how to spend additional income. Accordingly, HEW has strongly recommended incluson of these items but has not prescribed a hard-and-fast rule, and has thus permitted the State to determine to what extent to include them.

Even where an item must clearly be considered a work expense, States have been given a degree of latitude. Costs of transportation to and from work must be considered. But if an individual, without undue inconvenience, can take a bus to work, the State may consider the bus fare, and need not consider the individual's actual costs in driving his automobile or taking a taxi.[7] Similarly, if a State does consider the individual's costs in driving his own automobile, the State need not include the full amount of the individual's installment payments for purchase of the automobile, as the complaint in this case suggests. Again, here, HEW considers these limitations, if imposed by the State, to be consistent with proper consideration of "any expenses reasonably attributable" to the earning of income.

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7. The question of whether bus transportation is available is an example of the kind of determination that must be made by the agency worker on a case-by-case basis. Use of a flat amount saves staff time, avoids subjective judgments, and simplifies program administration.

Accordingly, as a starting point in justifying its flat amount of $35 for work expenses other than child care, Georgia must identify exactly what items of work expense are being covered, and on what basis, within the Federal rules just described.

Once the items have been identified, the much harder job is to show that they have been fairly priced and fairly averaged. The averaging itself may be quite intricate mathematically, but it can be accomplished readily by those who have the requisite competence, provided the data are available on how many individuals had what work expense at what monthly cost. The real problem is to gather the data.

For the agency to conduct an interview in depth with each recipient who works, and thus determine the exact work expenses, and repeat this process over many months to reflect seasonal variations, would yield accurate information, but would be wasteful of time, staff and money. Statistical sampling techniques can yield sufficiently valid results that the State already has information in its case records, the sampling can be facilitated by using the case records rather than interviews. Nevertheless, under current HEW practice, a State that wishes to use a flat amount must validate it by accepted techniques of one kind or another.

The Georgia situation is complicated by the fact that, prior to its present policy, the State considered mandatory payroll deductions on an individualized basis, and allowed a flat amount of $25 for all other work expenses (other than child care). It is not clear whether plaintiffs also attack Georgia's former policy (which was approved by HEW). If both the plaintiffs and the State now accept the $25 amount as adequate for the items it covered, it would

only be necessary for purposes of this case, to determine the flat amount which represents the average monthly mandatory payroll deduction and add this amount to the $25. This could be done by analysis of a suitable sample of the case records for an appropriate recent period or periods.

If, however, the State's former policy is also being challenged, it is necessary to ascertain current costs of work expense items other than child care. This could be done by interviewing a cross-section of cases. Alternatively, the State could analyze a sample of its case records for periods prior to May 1969 when the State recognized work expenses on an individualized basis. The costs thereby determined would of course have to be updated to reflect increases in cost levels since the period surveyed. HEW has advised the State that its entire flat amount of $35 must now be justified, notwithstanding the prior HEW approval of the flat amount of $25 plus payroll deductions. This accords with current HEW practice.

In conclusion, HEW submits that the use of flat amounts for work expenses is clearly permissible. However, the amount used must be supported by vigorous justification on an adequate objective basis. Pending such justification, the current Georgia policy of allowing a $35 flat amount per month for all work expenses other than child care has been neither approved nor disapproved by HEW.

JOHN W. STOKES, JR.
United States Attorney
JULIAN LONGLEY
Assistant United States Attorney

Attorneys
For the United States of America
as Amicus Curiae

Department of Health, Education, and Welfare

[Letterhead]

Social and Rehabilitation Service
Washington, D.C. 20201

SRS-APA-PS

September 26, 1969

TO STATE AGENCIES ADMINISTERING
APPROVED PUBLIC ASSISTANCE PLANS

Subject: Conversion Tables for the Application of the Disregard of the First $30 and ⅓ of the Remainder of the Gross Income of AFDC Family

The attached Conversion Tables have been developed for your optional use in cooperation with the National Center for Social Statistics and staff of several Regional Offices as a tool for applying the disregards mandated in Section 402(a)(8)(A)(ii) of the Social Security Act and SRS Program Regulation 20-7 Section 233.20(a) 11 (ii)(b).

Tables have been devised according to weekly, (Column 1), by-weekly, (Column 2), semi-monthly, (Column 3) and monthly (Column 4) pay periods, whichever is appropriate for the individual cases. The monetary amounts are expressed as gross earnings.

Column 5 represents the amount remaining after the application of the disregard of the first $30 and ⅓ of the remainder. These amounts have been rounded for $.50 (fifty cents) and over to the nearest dollar. For State agencies which have objectively and equitably identified a standard amount for expenses reasonably attributable to employment, the tables may be further adjusted as demonstrated below.

For example: In a situation where a State agency has an established standard of $50 per month for all mandatory payroll expenses and all occupational expenses,

the attached tables for such a State agency could be adapted to read as follows:

Conversion Tables of Gross Earnings by Frequency of Pay Period. The Application of the Disregard of the First $30 and ⅓ Remainder of AFDC Family Gross Income and Deduction of State Standard of Expenses Reasonably Attributable to the Earnings of One Wage Earner.*

(1) Weekly	(2) Bi-Weekly	(3) Semi-Monthly	(4) Monthly	(5) Net Amount Remaining Less $30 and ⅓ and Expenses of One Wage Earner
Up to:	Up to:	Up to:	Up to:	
24.06-24.40	48.12-48.80	52.13-52.87	104.25-105.74	0
24.41-24.74	48.81-49.49	52.88-53.62	105.75-107.24	1.00
24.75-25.09	49.50-50.19	53.69-54.37	107.25-108.74	2.00
25.10-25.44	50.20-50.88	54.38-55.12	108.75-110.24	3.00
25.45-25.78	50.89-51.57	55.13-55.87	110.25-111.74	4.00

Methodology for application of the mandated disregard in AFDC (AFDC family eligible in accordance with Section 402(a)(8)(D) of the Social Security Act.)

1. If State agency has opted to disregard not more than $5 a month per recipient of any income, deduct this designated amount.
2. Disregard all the earned income of any dependent child who is a full or part-time student who is not a full-time employee.
3. From the remaining gross income of the AFDC family apply the disregard of the first $30 and ⅓ of the remainder.
4. From the remaining amount in 3 above, subtract expenses reasonably attributable to the earning of income for each wage earner (excepting those expenses attributable to the earnings of a dependent child whose income is disregarded in accordance with 2 above).

(*For each additional wage earner, deduct amount designated by State agency.)

5. If State agency has opted to provide for conservation of income for future identifiable needs of a child, deduct the applicable amounts.
6. The remainder from 4 and 5 above, whichever is applicable, plus all other available income is subtracted from the amount used by the State to determine need and the amount of the assistance payment.

Determination or redetermination of eligibility for AFDC family who has not been receiving AFDC for any one of the four months preceding the month of the determination.

1. The total AFDC family income, earned and unearned, less only the expenses reasonably attributable to earning of income for each wage earner is to be applied to the appropriate amount used by the State to determine need.
2. If there is a budget deficit without the application of any of the disregards and conservations (that is the disregard of student earned income, first 30 and ⅓ remainder, setting aside for future needs of a child, and the disregard of up to $5 per recipient of any income—Sections 402(a)(8)A (i) & (ii), 402 (a)(8) B (i) & (ii) of the Social Security Act, respectively) then the method as identified in the above is applicable.
3. If there is no budget deficit, that is the total AFDC family income exceeds the appropriate amount used by the State to determine need, the family is not eligible.

Sincerely,

/s/ STEPHEN P. SIMONDS
Stephen P. Simonds
Commissioner

Appendix F

Letter from Stephen P. Simonds, Commissioner, Assistance Payments Administration, Department of Health, Education, and Welfare, to State Agencies Administering Approved Public Assistance Plans dated March 18, 1969.

Department of Health, Education, and Welfare
[Letterhead]
Social and Rehabilitation Service
Washington, D.C. 20201

In Reply Refer to:
SRS-APA-PC
March 18, 1969

Handbook Transmittal No. 149

TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS

From: /s/ STEPHEN P. SIMONDS
Stephen P. Simonds, Commissioner

Subject: Policy Material-Revised and Obsolete—Handbook of Public Assistance Administration

Material Transmitted	*Material Superseded*
Table of Contents IV-3000-3999	IV-3000
	IV-3424
Information Sheets	IV-3460
	IV-5235
	IV-8300
	V-3320

BACKGROUND AND EXPLANATION

Many policies formerly issued in the Handbook of Public Assistance have been revised and published in the Code of Federal Regulations. Where Handbook policies are inconsistent with a regulation, the regulation governs. Since much of the official policy remains in the Handbook, the sections that have been amended, revised, or obsoleted are indicated below. Those sections not amended by the new regulations continue to have full force and effect.

1. *Application, Determination of Eligibility and Furnishing Assistance*—IV-2000.
   The recently published regulation—Simplified Method for Determination of Eligibility—PA Programs-relates to IV-2000. (See *Federal Register* 45 CFR 205.20, dated January 24, 1969 or SRS Program Regulation 10-3.)
2. *Need*—IV-3000-3199.23-p. 2, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 233.20, dated January 29, 1969 or SRS Program Regulation 20-7.)
3. *Deprivation of Parental Support or Care*—IV-3410
   The regulation published August 8, 1968, 45 CFR 203.1, relates to IV-3410.
4. *Dependent Children of Unemployed Fathers*—IV-3424-3424.42, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 233.100, dated January 24, 1969 or SRS Program Regulation 20-3.)
5. *AFDC-Foster Care*—IV-3453-3454.21
   The Regulation 45 CFR 233.110, amends IV-3453 and IV-3454 and makes foster care mandatory. (See *Federal Register,* dated January 28, 1969 or SRS Program Regulation 20-6.)
6. *Community Work and Training*—IV-3460-3465
   This provision was obsoleted by P.L. 90-248. (See *Federal Register,* 45 CFR 233.140, dated January 1, 1969 or SRS Program Regulation 20-1.)
7. *Social Services*—IV-4000
   The policy relating to services in AFDC has been revised and published as a regulation. (See *Federal Register,* 45 CFR 220, dated January 28, 1969 or SRS Program Regulation 30-1.) This policy remains in effect with respect to the Adult Categories until revised.
8. *Protective and Vendor Payments for AFDC*—IV-5235-5235.4-p. 2, is obsolete. This policy has been revised and published as a regulation. (See *Federal Register,* 45 CFR 234.60, dated January 28, 1969 or SRS Program Regulation 20-5.)

9. *Fair Hearing: Legal Services; Continuing Assistance* —IV-6000-6500, is amended. (See *Federal Register,* 45 CFR 205.10, dated January 24, 1969 or SRS Program Regulation 10-2.)
10. *Locating Absent Parents*—AFDC—IV 8300 is obsolete. (See *Federal Register,* 45 CFR 220.48, dated January 28, 1969 or SRS Program Regulation 30-1.)
11. *Recipient Count*—V-3300-3320-p. 2
    This has been revised and published in the *Federal Register.* (See *Federal Register,* 45 CFR 237.50, dated January 17, 1969 or SRS Program Regulation 20-2.)

EFFECTIVE DATES

Check the *Federal Register* indicated for the effective dates of the above mentioned changes.

INSTRUCTIONS FOR HANDBOOK MAINTENANCE

a. In Part IV:
   1. With pen and ink, make the following notation on pages 2000 and 2600:
      "See *Federal Register,* 45 CFR 205.20, dated January 24, 1969 or SRS Program Regulation 10-3."
   2. Remove Table of Contents IV-3000 and 3000 thru 3199.23-p.2. Insert Table of Contents IV-3000 and sheet 3000-3199.23-p.2.
   3. With pen and ink, make the following notation on pages 3410-3412:
      "See *Federal Register,* 45 CFR 203.1, dated August 8, 1968."
   4. Remove Table of Contents and pages 3424 thru 3424.3-p.2. Insert enclosed sheet for Part IV, pages 3424-3424.3-p.2.
   5. With pen and ink, make the following notation on pages 3450 and 3453 and 3453-p.5, item 3454.1:
      "This section is amended. See *Federal Register,* 45 CFR 233.100, dated January 28, 1969 or SRS Program Regulation 20-6."

6. Remove Table of Contents and pages 3460 thru 3465-p.2. Insert enclosed sheet for Part IV, pages 3460-3465-p.2.
7. With pen and ink, make the following notation on page 4000:
   "This policy does not apply to AFDC. See *Federal Register,* 45 CFR 220, dated January 28, 1969 or SRS Program Regulation 30-1."
8. Remove Table of Contents IV-5235 thru pages 5235.4-p.2. Insert enclosed sheet for Part IV-5235-5235.4-p.2.
9. With pen and ink, make the following notation on pages 5514-p.2, item 2 C and 6000:
   "This section is amended. See *Federal Register,* 45 CFR 205.10, dated January 24, 1969 or SRS Program Regulation 10-2."
10. Remove pages 8300 thru 8330-p.2. Insert the enclosed sheet for IV-8300.

b. In Part V:
   Remove pages 3300 thru 3320-p.2. Insert sheet for Part V, pages 3300-3320-p.2. At top of page 3320-p.3, with pen and ink mark out "3320, Recipient Count (continued)" and all of item d.

c. Make appropriate notation on the Form, Record of Receipt of Handbook Transmittals.

Appendix G

Opinion of the Court of Appeal of the State of California in Conover v. Hall, 28 Cal. App. 3d 676; hearing granted by California Supreme Court January 17, 1973.

[Civ. No. 13289. Third Dist. Nov. 13, 1972.]

SALLY LEE CONOVER et al., Plaintiffs and Respondents, v. JAMES M. HALL, as Secretary, etc., et al., Defendants and Appellants.

SUMMARY

Recipients of aid under the federal Aid to Families with Dependent Children (AFDC) program brought a class action to declare Welf. & Inst. Code, § 11451.6, a part of the state's participation in that program establishing a standard allowance for all work-related expenses exclusive of child care costs, to be in violation of the federal Social Security Act and a denial of equal protection requirements. The trial Court issued a preliminary injunction restraining enforcement of the statute. (Superior Court of Sacramento County, No. 215815, William M. Gallagher, Judge.)

The Court of Appeal reversed. Characterizing the involved federal statute, 42 U.S.C. § 602(a)(7), as ambiguous with respect to the question whether the states may set up a standard for purposes of administrative ease, the court interpreted it as not requiring participating states to deduct all work-related expenses in determining financial need, and concluded that Welf. & Inst. Code, § 11451.6, insofar as it sets up a statewide standard exclusive of child care costs, comports to federal law. Accordingly, the court reversed the order granting the preliminary injunction. (Opinion by Regan, J., with Richardson, P. J., and Coakley, J.,* concurring.)

*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

COUNSEL

Evelle J. Younger, Attorney General, and N. Eugene Hill, Deputy Attorney General, for Defendants and Appellants. Daniel S. Brunner, Valerie Vanaman, Philip Goar, Clifford Sweet, F. Hayden Curry, Ralph Santiago Abascal and Daniel Brunner for Plaintiffs and Respondents.

OPINION

REGAN, J.—Plaintiffs are recipients of Aid to Families with Dependent Children (hereafter "AFDC").[1] On September 22, 1971, plaintiffs commenced a class action in which they sought to have the court declare section 11451.6 of the Welfare and Institutions Code to be in violation of the federal Social Security Act and a denial of equal protection to plaintiffs and members of their class. After various proceedings in the trial court, the court issued a preliminary injunction restraining the defendants from enforcing the provisions of section 11451.6 of the Welfare and Institutions Code.[2] The preliminary injunction issued without a requirement that plaintiffs post a bond or undertaking to secure defendants against damage.

Defendants appeal.

FACTS

The State of California participates in the AFDC program. (Welf. & Inst. Code, § 11200 et seq.) The purpose of the program is set forth in the federal law: "For the purpose of encouraging the care of dependent children in their

1. AFDC is funded by the federal and state governments pursuant to the Social Security Act of 1935. (42 U.S.C. § 601 et seq.; see *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 453-454, 90 S.Ct. 1207].) The AFDC program is implemented in California by the Welfare and Institutions Code (§ 11200 et seq.).

2. In its written opinion, the trial court concluded that the state law and implementing regulations conflict with the federal law and thus are invalid.

own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children." (42 U.S.C. § 601.)

States are not required to participate in the AFDC program. However, once a state chooses to join it and take advantage of the substantial federal funds available, the state must comply with the mandatory requirements established by the Social Security Act as interpreted and implemented by the United States Department of Health, Education and Welfare (hereafter "HEW"). (*King v. Smith* (1968) 392 U.S. 309 [20 L.Ed.2d 1118, 1125-1126, 88 S.Ct. 2128]; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 738-739 [97 Cal.Rptr. 385, 488 P.2d 953]; see 45 C.F.R. 233.20; Handbook of Public Assistance Administration (Dept. HEW).) (1) However, the states have considerable latitude in allocating their AFDC resources, since each state is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program. (*King v. Smith, supra,* 20 L.Ed.2d at p. 1126; *Dandridge v. Williams* (1970) 397 U.S. 471 [25 L.Ed. 2d 491, 498-499, 90 S.Ct. 1153].)

As a condition to the continued receipt of federal funds, each of the various states participating in the AFDC program must have a state plan which provides "that the State agency shall, in determining need, take into consideration . . . any expenses reasonably attributable to the earning of . . . income. . . ." (42 U.S.C. § 602(a)(7).)[3]

On August 13, 1971, the Welfare Reform Act of 1971 (Stats. 1971, ch. 578) became law. Section 28.1 of that act added section 11451.6 to the Welfare and Institutions Code (operative October 1, 1971). It provides as follows: "Notwithstanding Section 11008 [determination of recipient's income], any exemption from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars ($50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Interagency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967.)"[4]

Prior to October 1, 1971, recipients of AFDC work supplements were allowed the full amount of their work-related expenses subject only to a limitation for personal items such as clothes and lunches. These expenses included such

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3. A portion of the congressional committee's report reads: "[I]f these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore, added a provision in all assistance titles requiring the States to give consideration to any expenses reasonably attributable to the earning of income." (1962 U.S. Code Cong. and Admin. News, p. 1960.)

4. Regulations were also adopted by the Department of Social Welfare to implement this section.

items as transportation costs, federal withholding, income tax, state disability insurance, social security, retirement contributions, union dues, and the $25 standard deduction for food, clothing and miscellaneous. (See Beilensen and Agram, *The Welfare Reform Act of 1971,* 3 Pacific L.J. 475, 483-484.) The amount to be deducted depended upon the circumstances of each case.

On October 1, 1971, defendant, Director Carleson, sent the following telegram to Mr. Rubel of HEW in Washington, D.C.: "We are receiving inquiries as to whether the requirements of 42 U.S.C. 602(a)(7)(i) and 45 C.F.R. 233.20(a)(3)(iv)(a) and 45 C.F.R. 233.20(a)(7)(i) would permit the State of California to develop a statewide standard allowance for all work-related expenses which would apply a flat sum for all work-related expenses against income in accordance with other requirements of federal law.

"Would you advise me whether there is any provision of federal law which in the opinion of the Department of Health, Education and Welfare would preclude such a standard allowance."

A telephone transcription of the telegram from the Regional Commissioner received on October 4, 1971, reads as follows: "REURTEL to Rubel 10-1-71, cited sections Social Security Act and HEW regulations requires state AFDC plan provide that state agency in determining need take into consideration any expenses reasonably attributable to earning income. We interpret act and regulations to permit states, for purposes of simple and efficient administration, to establish justifiable standard allowance for all such expenses, not including child care, to be uniformally applied in all situations with earned income. State must substantiate that amount fixed as standard allowance covers all such personal and nonpersonal expenses reasonably attributable to earning income, for example, through factual

study on adequate sample basis or from family living studies conducted by U.S. Bureau of Labor Statistics."[5]

The federal scheme for determining the financial need for AFDC of a child and working parent, as set forth in the law (42 U.S.C. § 602(a)(8)(A)(ii)), requires that the first $30 plus one-third of the remainder of the gross monthly earnings be considered exempt. In computing AFDC entitlements under section 11451.6 of the Welfare and Institutions Code, by a "standard allowance" for work-related expenses, the following procedure would be used:

Gross Monthly Earnings (assumed)		$ 480.00
Less $30.00		-30.00
		$ 450.00
And one-third		-150.00
		$ 300.00
Less: Child care (assumed)	$100.00	
Standard allowance	50.00	
	$150.00	$-150.00
Net Income		$ 150.00

The figure representing net or nonexempt income is then used for purposes of AFDC grant determination. (In general, see, 3 Pacific L.J., *supra,* at pp. 483-484.)

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5. In their brief, defendants contend: "While the telegram from Philip Schafer stated that the *amount* of the standard established for work-related expenses must be substantiated as an allowance to cover all such personal and non-personal expenses reasonably attributable to earning income, no issue exists as to validity of the *amount* of the standard established by the Legislature. The issue framed by respondents' complaint is limited to the right of the Legislature to determine work-related expenses by the use of a standard allowance of any amount. . . . The validity of the *amount* of the standard allowance is not before any court at this time."

At issue in this appeal is that portion of work-related expense calculation employing the $50 standard allowance[6] for work-related expenses, exclusive of child care, as provided for in section 11451.6.

Plaintiff filed declarations of AFDC recipients in the trial court to the effect that their work-related expenses exceeded $50 per month and that they would suffer irreparable harm if the standard allowance is applied. Plaintiffs contend the result of the implementation of the standard allowance would be to seriously reduce or terminate AFDC benefits to a substantial number of working parents.

The trial court in its opinion on request for issuance of a preliminary injunction stated, in part, as follows: "It appears to this Court that the Congressional requirement that consideration be given to 'any expense reasonably attributable to the earning of such income' (42 U.S.C. § 602 (a)(7)) precludes a fifty dollar ($50.00) maximum absent some provision to permit allowance of expense in excess of the fifty dollars in the individual case where properly substantiated. It therefore appears to the Court that § 28.1 of the Welfare Reform Act of 1971 [Welf. & Inst. Code, § 11451.6] and the implementing regulation (Def. #C) adopted September 29, 1971 are invalid."

The court granted the preliminary injunction and this appeal followed.

Conformity with Federal Law.

Defendants contend that section 11451.6 does not contravene the Social Security Act and is a valid method to take work-related expenses into account.

6. Plaintiffs refer to the limitation as a "maximum" on work-related expenses while defendants refer to it as a "standard allowance." The limitation does operate as a maximum for those recipients who incur work-related expenses *in excess of* $50. In this respect, counsel for defendants stated in the trial court that all applicants were to be credited with the $50, regardless of what their work-related expenses are.

Basically, the position of defendants can be summarized as follows: The pertinent section of the Social Security Act[7] does not require the subtraction of each individual's personal work-related expenses but leaves to the state the method by which a state is to consider them. They argue that the key words of the section are "take into consideration," and neither the act nor the implementing regulations prescribe any particular method or procedure. (See 45 C.F.R. 233.20(a)(3)(iv)(a); 45 C.F.R. 233.20 (a)(7) (i).) The California Supreme Court has previously approved a standard deduction for work-related food, clothing, and incidental expenses (*County of Alameda v. Carleson, supra,* 5 Cal.3d at p. 748, fn. 20),[8] and the Legislature has chosen to extend the standard to all work-related expenses for ease of administration and to reduce costs by eliminating individual calculation of each family's expenses.[9]

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7. 42 U.S.C. § 602(a)(7), sets forth that portion of the act relating to work-related expenses. It reads: "(a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration . . . any expenses reasonably attributable to the earning of any . . . income . . . ."

8. However, the court in that case also stated (at pp. 747-748): "The legislative history underlying the work-related expenses deduction provision indicates that it was the intent of Congress to permit the exclusion of *all* such expenses, without regard to the amount expended, provided that such expenses were reasonably related to employment."

9. In *Dandridge v. Williams, supra,* 397 U.S. 471, 487 [25 L.Ed. 2d 491, 503], the court rejected an equal protection attack upon a Maryland regulation placing a ceiling on monthly grants to large families under AFDC: "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court."

Secondly, defendants contend that HEW interpreted the Social Security Act to permit a standard deduction for all work-related expenses except child care. (See Reply of Regional Commission to Carleson, set forth above; see also, 45 C.F.R. 201.3(c).) (2) The interpretation of the agency charged with the administration of the act is entitled to considerable weight. (*Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 452, 457, 90 S.Ct. 1207].)

Defendants also argue the history of the HEW Handbook of Public Assistance Administration supports their position. Prior to March 18, 1969, section 3140, part IV, only permitted a standard allowance for work-related food, clothing and personal incidentals. However, on March 18, 1969, portions of the federal handbook were repealed and the provisions were carried into the regulations. The regulations adopted on the repeal of section 3140 of the handbook are silent upon the use of a standard allowance, and where federal regulatory language is neutral, uniform allowances have been approved. (*Id.* at p. 459 [25 L.Ed.2d]; see also *Amos v. Engleman* (D.N.J. 1970) 335 F.Supp. 1109, affd. per curiam 404 U.S. 23 [30 L.Ed.2d 143, 92 S.Ct. 181] [but on other grounds].)

Thirdly, defendants contend the trial court erroneously construed section 11451.6 to create a maximum allowance rather than a *standard* allowance. They concede that one court has found it impermissible to place a ceiling or maximum upon work-related expenses. (*Williford v. Laupheimer* (E.D.Pa. 1969) 311 F.Supp. 720.) The defendants find a distinction between the two techniques and argue as follows: "When a maximum is imposed, the individualized determination is made, but a fiscal limit is placed upon the absolute amount of expenses any individual may include in the grant determination. A standard allowance consolidates and averages work expenses across the universe of

all families. The result will be that some families and individuals will be benefited and others affected adversely as all will receive an average amount. . ."[10]

Plaintiffs, on the other hand, contend that section 11451.6 is invalid since it is in direct conflict with section 602(a)(7) of the Social Security Act and implementing federal regulations. (See 42 U.S.C. § 601; 45 C.F.R. 233.20(a)(7).) (3) While states are not required to participate in the AFDC program, they must comply with federal law in the administration of their program if they accept federal funds for this purpose. (*King v. Smith, supra; Rosad v. Wyman, supra.*)

Plaintiffs rely upon several federal district court cases to support their position. In *Williford v. Laupheimer, supra,* 311 F.Supp. 720, the court was faced with a state regulation that provided for a maximum of $50 for work-related expenses.[11] The court held that this was impermissible under section 602(a)(7) of the Social Security Act, stating (at p. 722): "We think it obvious that the fifty dollar limitation on income deductions is inconsistent with the express provisions of the Social Security Act. The im-

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10. In the brief of the United States as amicus curiae in *Adams v. Parham* (N.D.Ga. 1972) ..... F.Supp. ....., the matter is put thusly: "HEW does not view the use of maximums as acceptable under 42 U.S.C. 602(a)(7). They do not operate like averages. A maximum adversely affects individuals with higher expenses, but in contrast to an average it does not benefit individuals with lower expenses. Moreover, the use of actual expenses on an individualized basis if below the maximum means that the administrative advantages of using an average are not obtained. A maximum, of course, bears no relationship and does not purport to bear any relationship to the actual expenses incurred. It merely establishes an arbitrary ceiling on the amount of expense which the State will recognize. A standard based on averaging, on the other hand, by definition must bear a reasonable relationship to actual expenses which can reasonably be expected to be incurred."

11. This $50 limitation apparently included child care expenses. *Williford* is cited with approval in *County of Alameda v. Carleson, supra,* 5 Cal.3d at pp. 748-749.)

position of such a maximum deduction violates the clear Congressional directive that the states shall allow deductions for 'any expenses reasonably attributable to the earning of any such income.' The Commonwealth makes no claim that this limitation is inspired by any considerations other than an attempt to preserve and protect its coffers. And although we may sympathize with the state's attempt to alleviate the unquestionably and increasingly heavy burden of programs such as AFDC, the solution of such problems resides in Congress. To date, it has not seen fit to impose any limitation of work-related income deductions; the states are not free to do otherwise." (Accord, *Vialpando v. Shea* (D.C.Colo. 1972); ..... F.Supp. .....; *Adams v. Parham* (D.C.Ga. 1972); ..... F.Supp. .....; see also *Connecticut St. Dept. of Pub. W. v. Dept. of H., E. & W.* (2d Cir. 1971) 448 F.2d 209, 216-217; cf. *Amos v. Engelman, supra.*)

Plaintiffs also rely upon *County of Alameda v. Carleson, supra,* 5 Cal.3d 730. It is true that this decision seems to support plaintiffs' position. However, that case did not present the precise issue with which we are here faced. In *Alameda, supra,* certain counties brought an action against Carleson alleging, inter alia, that state welfare regulations authorized more generous deductions for work-related expenses than was allowable under federal law. The court upheld the state regulation, stating that it was the intent of Congress to permit the exclusion of all work-related expenses. (*Id.* at pp. 747-748.)

Finally, plaintiffs contend that the *Rosado* case, which discussed the permissibility of drawing a statistical average with regard to a standard of need (*Rosado v. Wyman, supra,* 25 L.Ed.2d at p. 459), is inapplicable to the instant case since the state provisions there did not involve a direct conflict with the Social Security Act.

The federal statute in question is ambiguous. As we read the statute, there is no mandate by Congress that a participating state *must* deduct *all* work-related expenses. We think there is merit in the argument that the California Legislature has imposed a statewide *standard* rather than an alleged maximum. This standard, of course, will adversely affect some recipients but will benefit others. It would be naive to assume that work-related expenses, exclusive of child care, never exceed the magic number of $50. However, the amount of the standard is not before this court. Rather, the sole issue before us is whether a statewide standard, such as is set forth in section 11451.6, conforms to federal law. In other words, may the states set up a standard for purposes of administrative ease under the Social Security Act?

With due respect for the opinions of the federal courts, we think such decisions are distinguishable. They were concerned with maximum cut-offs which benefited no one. We must also keep in mind the fact that California has excluded child care expense, a not inconsiderable figure. (4) To reiterate, section 602(a)(7) does not require the states to deduct any and all work-related expenses. The recent interpretation of the act by the Regional Commissioner of HEW supports a statewide standard. (Cf. *Lewis v. Martin* (1970) 397 U.S. 552 [25 L.Ed.2d 561, 567, 90 S.Ct. 1282].) (5) We think the California statute, insofar as it sets a statewide standard exclusive of child care costs, comports to federal law and thus find no invalidity. (Cf. *Jefferson v. Hackney* (1972 406 U.S. 535 [32 L.Ed.2d 285, 92 S.Ct. 1724].)

Having arrived at this conclusion, we do not reach defendants' contentions (1) that the trial court lacked jurisdiction to enjoin them from enforcing section 11451.6 of the Welfare and Institutions Code, (2) that the trial court

violated section 529 of the Code of Civil Procedure when it issued a preliminary injunction without requiring an undertaking, and (3) that the trial court lacked jurisdiction to issue its order requiring defendants to comply with the preliminary injunction pending appeal.

The order granting the preliminary injunction is reversed.

Richardson, P. J., and Coakley, J.,* concurred.

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*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

CON F. SHEA,
EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF SOCIAL SERVICES, ET AL.,
PETITIONERS

v.

ASCENSION VIALPANDO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is filed in response to the Court's invitation to the Solicitor General to file a memorandum expressing the views of the United States.

QUESTION PRESENTED

Whether under Section 402(a)(7) of the Social Security Act a state, in determining the level of aid-to-families-with-dependent-children assistance required by families with working members, may use a statistically based estimate of the work expenses that a typical employee may be reasonably expected to incur.

STATEMENT

Pursuant to Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.*, the federal government provides

funds for state programs of aid to families with dependent children, commonly known as AFDC programs. In order to qualify for federal funding a state AFDC program must provide, *inter alia*, that in determining the level of assistance needed by a family the state will "take into consideration any * * * income and resources of any child or relative claiming aid * * *, as well as any expenses reasonably attributable to the earning of any such income * * *." Section 402(a)(7) of the Act, 42 U.S.C. 602(a)(7). This case involves the meaning of the requirement that the state "take into consideration * * * any expenses reasonably attributable to the earning of * * * income." All the states operate federally-funded AFDC programs; it is the Colorado program which is involved in this case, but the issue presented affects most state AFDC programs.

In determining the amount of AFDC assistance to which a family is entitled, it is first necessary to calculate that family's available income. Under Section 402(a)(8), a family with one or more working members is permitted to deduct a work-incentive allowance, commonly referred to as the "earned income disregard," from its income in computing the amount of the AFDC benefit. Similarly, Section 402(a)(7) requires a deduction for work expenses. Under the Colorado program, each working member of the family is permitted a monthly work expense deduction equal to the sum of (1) mandatory payroll deductions, (2) all actual child care expenses incurred in connection with work, and (3) an additional flat amount of thirty dollars designed to cover all other work-related expenses, such as lunches and transportation. The family's available income consists of its gross income as reduced by the earned income disregard and and deduction for work expenses. The amount of the family's benefits is then determined by

comparing its available income with a fixed standard of need for a family of its size. See generally, *Rosado* v. *Wyman*, 397 U.S. 397.

Respondent Ascension Vialpando brought this class suit for declaratory and injunctive relief in the United States District Court for the District of Colorado, challenging the propriety, under the Social Security Act, of Colorado's standard allowance of thirty dollars for work-related expenses. She claimed that her monthly work-related expenses, exclusive of mandatory payroll deductions and child care expenses, exceeded thirty dollars and that the application of the standard allowance to her therefore resulted in an overstatement of her available income and, consequently, in a wrongful deprivation of benefits to which she was entitled under the Act.

The district court granted summary judgment for respondents (Pet. App. C). The court read Section 402(a)(7) as requiring Colorado to compute the work expense deduction of each employed beneficiary on the basis of his own itemized expenses, and as barring the use of a standard allowance for work expenses (Pet. App. D; see also Pet. App. B). The court declared Colorado's standard work expense allowance invalid under the Act and enjoined its use by petitioners.[1] The court of appeals affirmed (Pet. App. A).

DISCUSSION

1. a. The Secretary of Health, Education, and Welfare supports Colorado in this suit. It is the position of

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[1] The injunction apparently bars petitioners from using the standard allowance even where it exceeds a claimant's itemized expenses. See Pet. App. C, p. C-2.

the Secretary that Section 402(a)(7) of the Act permits the use of mandatory standard work expense allowances based upon statistical determinations of the work expenses that a typical employee may be reasonably expected to incur. This view has evolved over time, in recognition of the practical necessities of administration. Thus in 1964 the Secretary took the position that whereas standard allowances could be used for purposes of administrative convenience, an employed beneficiary was entitled to a higher work expense deduction "when there is determination that such [higher] expenses do, in fact, exist in the individual case." HEW, *Handbook of Public Assistance Administration* Part IV, §3140 (Pet. App. F, p. F-2). However, this handbook provision was superseded in 1969 by regulations (45 C.F.R. 233.20) that essentially restate the statutory language without discussing the extent to which standard work expense allowances may be used.[2] The use of mandatory standard work expense allowances was being approved in 1969. See the September 26, 1969 letter of Commissioner Simonds (Pet. App. G). For the last several years, the practice of the Secretary has been to approve state AFDC programs employing mandatory standard work expense allowances "where there has been a factual justification of the reasonableness of the flat amount [of the allowance]" (May 15, 1972 letter of Acting Associate Regional Commissioner Skillern; Pet. App. H, p. H-2).

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[2] Respondents contend (Resp. Br. in Opp. 12-13) that these regulations require case-by-case determinations of actual expenses. However, the Secretary has never interpreted the regulations to require such determinations, and the Secretary's construction of his own regulations is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1, 16-18.

b. Most state AFDC programs now include some form of mandatory standard work expense allowance. According to a departmental survey of state plans, twenty states, including Colorado, use a standard work expense allowance in combination with actual child care expenses and, in some cases, mandatory payroll deductions; an additional fifteen states use other systems of mandatory standard allowances for one or more major items of work expense.

This shift to mandatory standard allowances is grounded primarily in considerations of administrative convenience.[3] The use of such allowances eliminates the need for separate legal judgments and factual determinations on a case-by-case basis; this greatly simplifies and expedites the processing of benefit claims and significantly reduces the administrative workload and expenses.[4] Standard allowances also facilitate automation of computation and payment processes and minimize the likelihood of computational error.

c. The courts below acknowledged that there may be important practical reasons for using mandatory standard work expense allowances. They nevertheless concluded that the language of Section 402(a)(7) and its legislative history reveal a clear Congressional

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[3] Use of standard allowances based upon statistically determined averages does not affect the total amount of benefits distributed by a state. Thus a state's only interest in using such allowances is in the improvement of program efficiency.

[4] The County of Los Angeles, California, Department of Public Services has informed the Secretary that it has determined, on the basis of work measurement studies, that the use of mandatory standard work expense allowances would permit a staff reduction of over 30 employees at an annual savings in excess of $400,000.

intention of requiring case-by-case determinations of actual work expenses. We disagree.

The statute provides that a state "shall, in determining need, take into consideration * * * any expenses reasonably attributable to the earning of * * * income." This language falls short of requiring an individually-itemized work-expense deduction. We believe that work expenses may be "take[n] into consideration" by providing the same standard allowance for all employed beneficiaries. The statutory phrase "take into consideration" is flexible and, as the court of appeals below recognized (Pet. App. A, p. A-4), "by itself does not require a particular treatment of employment expenses."

The court of appeals reasoned, however, that since that statutory phrase applies not only to work expenses but also to income, which obviously must be determined on an individualized basis, the statutory context requires individualized itemization of work expenses as well. But this approach to statutory construction overlooks the fact that a single word or phrase often takes on different meanings for each of its objects within the same sentence.[5]

Moreover, as Blackstone noted long ago (1 Blackstone, *Commentaries* 59 (Philadelphia, 1866)), "[t]he fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made * * *." The provisions in Section 402(a)(7) relating to income and work expenses were enacted separately. The original statutory requirement

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[5] For example, one might say of a hunter and canoeist that "he shoots both squirrels and rapids." We see no reason why "take into consideration," any more than "shoots," must necessarily have the identical meaning as to each of its objects.

that "income" be taken into consideration was designed to ensure that the respective incomes of all members of the family be considered in assessing the family's need; the clear "will of the legislator" was that the particular family's actual income was to be computed. After several years' experience with AFDC programs, Congress then amended the statute (Section 106 of P.L. 87-543, 76 Stat. 188) to require that work expenses be considered in determining need; this was done in recognition of the fact that families with working members incur not only the family living expenses normally included within the state's standard of need but additional work-related expenses as well.

Congress was aware that work expenses were simply additional items of living expense incurred by virtue of employment: as the Senate Finance Committee noted in recommending passage of the work expenses amendment, "if these work expenses are not considered in determining need, they have the effect of * * * reducing the amount available for food, clothing, and shelter." S. Rep. No. 1589, 87th Cong., 2d Sess., at 18. It has therefore been the judgment of the Secretary that work expenses may be taken into consideration by the states in the same manner as other living expenses, *i.e.*, "on the basis of statistical averages." *Rosado* v. *Wyman*, 397 U.S. 397, 419.

This construction of the statute satisfies both the specific legislative purpose of ensuring consideration of the special needs of families with working members and the more general objective of efficient administration. And it is, of course, a long-standing principle of statutory interpretation that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that

it is wrong." *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 381.

In rejecting the Secretary's construction, the courts below stressed that the statute requires "any" work expenses to be taken into consideration and that the report of the Senate Finance Committee indicated that such expenses were to be taken "fully into account." We do not believe that the words "any" and "fully" support the conclusion of the courts below. The Secretary does not construe the statute as permitting an arbitrary work expense allowance; under the Secretary's construction, to be valid, an allowance must be based on a statistically determined average. If the full range of reasonably foreseeable work expenses is included in the statistical base, the allowance so determined meets all legislative objectives reasonably implicit in the requirement that "any" expense be taken into consideration; and the legislative history relied upon by respondents shows nothing more than a congressional intent that a state choosing to use a standard work expense allowance must consider all likely work expenses, *i.e.*, "take these expenses fully into account" (S. Rep. 1589, No. *supra*, at 18), in establishing that allowance.

2. Notwithstanding the fact that, in our view, the case was wrongly decided below, there are two factors that may appear to militate against further review. First, as all parties agree, there is as yet no conflict among the courts of appeals on the issue presented. However, this issue is being actively litigated in the district courts (see Pet. 13-14, nn. 4 and 5) and there is therefore a substantial likelihood that a conflict may develop. Second, the Administration has sponsored a legislative proposal, S. 2311, that would, if enacted, in effect require the states to employ a standard work expense

allowance of the type now being used voluntarily by Colorado. The prospect of congressional action is of course uncertain; hearings have not yet been scheduled for consideration of the bill, which is pending in committee.

We nevertheless believe that this case is appropriate for review. The question presented affects the AFDC programs of at least thirty-five states and has been decided contrary to the Secretary's reading of the statute. This case therefore raises "an important question of federal law which has not been, but should be, settled by this court." Rule 19(1)(b) of the Rules of this Court.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be granted.

ROBERT H. BORK,
Solicitor General.
KEITH A. JONES,
Assistant to the Solicitor General.

OCTOBER 1973.

SUPREME COURT, U. S

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO, CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. McBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES: and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners.

v.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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INDEX

OPINION BELOW 1

JURISDICTION 1

STATUTES INVOLVED 2

REGULATIONS INVOLVED 4

QUESTIONS PRESENTED 9

1. Whether, in the administration of the Aid to Families with Dependent Children (AFDC) program, the use of a standardized statistically based work expense allowance, as described in Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual, violates Title IV of the Social Security Act when read as a whole or whether such an allowance is a permissible method to be used to "take into consideration" any such work expenses and determine their reasonableness.

2. Whether the decisions below in this case conflict with the decisions of this Court regarding (a) the weight to be given to administrative interpretations by the responsible federal agency and (b) the scope of the discretion of the secretary of an executive department.

STATEMENT OF THE CASE 9

SUMMARY OF ARGUMENT 13

ARGUMENT 13

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE CLEAR MEANING OF THE STATUTE INVOLVED

A. The Statute 13

B. The Statutory Requirement to "take into consideration" Certain Work Expenses 14

C. The States Have Considerable Latitude In

INDEX — continued

Allocating Funds Available For Welfare Purposes 14

D. This Court Has Previously Approved Of The Use Of Statistical Averaging In Another Subsection Of The Statute In Question 17

II. THIS COURT HAS HELD ON MANY OCCASIONS THAT THE INTERPRETATION BY A FEDERAL AGENCY OF THE STATUTES THAT IT ADMINISTERS IS ENTITLED TO GREAT WEIGHT. THE COURT BELOW HAS NOT GIVEN DUE CONSIDERATION TO THE INTERPRETATION BY U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE OF THE SOCIAL SECURITY ACT AND THE REGULATIONS PROMULGATED PURSUANT TO IT. 17

A. Introduction 18

B. This Court Has Held That The Agency Interpretation Of The Social Security Act Is Entitled To Great Weight 19

C. The Secretary Must Harmonize Several Provisions Of The Social Security Act In Determining Whether Or Not To Approve a State Plan Which Utilizes a Standardized Work Expense Allowance 20

1. The Requirement for a Statewide Program 20

2. The Requirement for Efficient Administration 20

3. The Requirement for Prompt Assistance..... 20

D. The Secretary's Interpretation of 42 USC §602(a)(7) Was Stated In the Memorandum Of The United States As Amicus Curiae In This Case. 21

INDEX — continued

E. The Secretary In Harmonizing The Foregoing Provisions Has Consistently Approved The Use Of Standardized Work Expense Allowances Since 1957 23

III. COLORADO WAS JUSTIFIED IN RELYING UPON THE INTERPRETATIONS OF THE SOCIAL SECURITY ACT AND THE IMPLEMENTING REGULATIONS MADE BY THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE WHICH PERMIT THE USE OF STANDARDIZED WORK EXPENSE ALLOWANCES 25

A. Colorado Complied With The Relevant Regulations Published In The Federal Register 25

B. Other Regulations Promulgated By HEW Which Were Not Published In The Federal Register Were Properly Relied Upon By Colorado. 27

1. Introduction 27

2. "State Letters" and "Assistance Payments Regional Memoranda" Need Not Be Published In The Federal Register. 28

C. Colorado's Work Expense Allowance Was Approved By HEW 30

IV. THE OPINIONS OF THE COURT BELOW SERIOUSLY HINDER THE EFFECTIVE ADMINISTRATION OF THE SOCIAL SECURITY ACT 30

V. CONCLUSION 32

CASES

Adams v. Parham, Civil Action No. 16041 N.D. Ga. filed April 14, 1972) 24,30,31

Anderson v. Graham, Civil Action No. CR 72 L 176, D. Nebr., Decided April 4, 1973 31
Campagnuolo v. White, Civil Action No. 13968 (D. Conn. filed June 22, 1972) 31
Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare, 448 F.2d 209 (2d Cir. 1971) 31
Conover v. Hall, 104 Cal. Reptr., 77 (Cal. App. 1972) 31
County of Alameda v. California, 97 Calif. Reptr. 385, 5 Cal. 3d 730, 488 P.2d 953, (1971), Appeal Dismissed 406 U.S. 913 (1972) 31
Dandridge v. Williams, 307 U.S. 471 (1970) 15,16
Engleman v. Amos, 333 F. Supp. 1109 (D.N.J. 1970) modified on other grounds 404 U.S. 23 (1971) 31
Ginsburg and Sons Inc. v. Popkin, 285 U.S. 204 (1932) 14,20
Housing Authority of the City of Omaha, Nebraska v. United States Housing Authority, 468 F. 2d 1, (8th Cir. 1972) 29
Jefferson v. Hackney, 406 U.S. 435 (1972) 15,17
King v. Smith, 392 U.S. 309 (1968) 10,15
Lewis v. Martin, 397 U.S. 552, 559 (1970) 19,25
Michigan Welfare Rights Organization v. Houston, Civil Action No. 34529 (E.D. Mich. filed April 30, 1971) 31
Rodriguez v. Swank, 318 F. Supp. 289 (N.D. Ill. E.D., 1970), aff'd 403 U.S. 901 (1971) 30
Rosado v. Wyman, 397 U.S. 397 (1970) 10,11,17,22
Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268 (1969) 29
Udall v. Tallman, 380 U.S. 1 (1965) 19,20,25

United States v. City of Chicago, 400 U.S. 8 (1970) 19,25
Williford v. Laupheimer, 311 F. Supp. 720 (E.D. Pa. 1969) 31
Worrell, *et al.*, v. Sterrett, et *al.*, CCH Pov. L.R. ¶10, 575 (N.D. Ind. 1969) 29

STATUTES

United States Code
5 United States Code
§551(4) 28,32
§552 29
§553 30
§553(a)(2) 29,30
28 United States Code
§1254(1) 2
§1343(3) 12
§1343(4) 12
§2201 12
§2202 12
42 United States Code
§601 2,14
§602 11
§602(a)(1) 20
§602(a)(5) 20
§602(a)(7) 10,13,14,15,18,21,23,25
§602(a)(10) 21
§1302 13,19
§1983 12
Colorado Statutes
Colorado Revised Statutes 1963 (1969 Perm. Cum. Supp.)
119-9-5 14

REGULATIONS

Code of Federal Regulations
45 Code of Federal Regulations
§201.2 28
§201.3 28,30
§233.20 4,14,25
§233.20(a)(3)(iv) 26
§233.20(a)(6)(iv) 26
§233.20(a)(7) 27
Federal Register
33 Fed. Reg. 10230 (1968) 23
34 Fed. Reg. 1394 (1969) 24
38 Fed. Reg. 3743 (1973) 20
38 Fed. Reg. 8743 (1973) 20
Other Federal Regulations
State Letter 291 23,28
Handbook of Public Asistance Administration 23,28
Assistance Payments Regional Memoranda 28,29
Colorado Division of Public Welfare Staff Manual
Section 4313.13 9,13,30

MISCELLANEOUS

82 CJS Statutes 364 (1943) 14
Memorandum for the United States as Amicus Curiae in the case of *Con F. Shea, et al., v. Ascension Vialpando, et al.*, No. 72-1513 in the Supreme Court of the United States 21
Attorney General's Manual on the Administrative Procedure Act, (1947) 29

RULES OF PROCEDURE

Federal Rules of Appellate Procedure, 41(b) 2

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OCTOBER TERM, 1972

No. 72-1513

CON F. SHEA, individually and as Executive Director of the DEPARTMENT OF SOCIAL SERVICES, STATE OF COLORADO, CHARLINE J. BIRKINS, individually and as Director of the COLORADO STATE DIVISION OF PUBLIC WELFARE; KEITH D. McBURNEY, ERNEST J. BLOEDORN, MANUEL DIAZ, JOHN L. HALEY, JAMES A. HENDERSON, M.D., GAIL F. OUREN, HENRY J. TUPPER, WILLIE E. ANTHONY, JAMES H. VINCENT, individually and as constituting the COLORADO STATE BOARD OF SOCIAL SERVICES: and MELVIN POBANZ, individually and as Director of the EL PASO COUNTY DEPARTMENT OF PUBLIC WELFARE,

Petitioners.

v.

ASCENSION VIALPANDO for herself and her minor child, SABRINA VIALPANDO,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Court of Appeals (App. 87-94) is reported in 475 F. 2d 731.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on March 22, 1973. (App. 87-94)

The petition for a writ of certiorari was filed on May 9, 1973, and was granted on November 5, 1973. This Court's jurisdiction rests on 28 USC §1254(1). On April 13, 1973, the Court of Appeals entered an order staying the issuance of its mandate until May 12, 1973, to allow time for appellants to file a petition for a writ of certiorari. The stay remains in effect pursuant to F.R. App. P. 41(b).

STATUTES INVOLVED

United States Code, Title 42:

"§601. Appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

§602 State plans for aid and services to needy families with children; contents; approval by secretary

(a) A State plan for aid and services to needy fam-

ilies with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; . . . (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; and . . . (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; (8) provide that, in making the determination under clause (7), the State agency—

(A) shall with respect to any month disregard—
(ii) in the case of earned income of a dependent child not included under clause (1), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination the first $30.00 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b) (2) and (3) of this title); . . .

• • •

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals. . .

§1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

REGULATIONS INVOLVED

The following parts of 45 CFR Section 233.20, as amended, are relevant to this case:

"§233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal statute.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (*i.e.*, combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3) (viii) of this paragraph. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State.

• • •

(3) *Income and resources; OAA, AFDC, AB, APTD, AABD.* (i) Specify the amount and types of real and personal property, including liquid assets, that may be reserved, *i.e.*, retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased.

• • •

(iv) Provide that, in determining the availability of income and resources, the following will not be included as income: (a) Income equal to expenses reasonably attributable to the earning of income:

• • •

(6) *Disregard of earned income; definition.* Provide that for purposes of disregarding earned income the agency policies will include: (i) A definition of 'earned income' in accordance with the provisions of subdivisions (iii) through (viii) of this subparagraph; and

(ii) Provision for disregarding earned income for the period during which it is earned, rather than when it is paid, in cases of lump-sum payment for services rendered over a period of more than 1 month.

(iii) The term 'earned income' encompasses income in cash or in kind earned by a needy individual through the receipt of wages, salary, commissions, or

profit from activities in which he is engaged as a self-employed individual or as an employee. Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. In considering income from farm operation, the option available for reporting under OASDI, namely the 'cash receipts and disbursements' method, *i.e.*, a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for public assistance.

(iv) With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(v) With respect to self-employment, the term 'earned income' means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the 'business expenses,' *i.e.*, total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(vi) The definition shall exclude the following from 'earned income': Returns from capital invest-

ment with respect to which the individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from 'earned income'); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment (for example, pensions and benefits, such as United Mine Workers' benefits or veterans' benefits).

(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources.

(7) *Disregard of earned income; method.* (i) Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income,' and all work expenses personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment."

The following part of Section 4313.13 of the Colorado Division of Public Welfare Staff Manual, Volume IV, is relevant to this case:

"4313.13 EMPLOYMENT INCOME.

• • •

For employment expenses such as transportation, special clothing, union dues, special education or training costs, telephone, additional food or personal needs, etc., which are an obligation due to the employment, an allowance of $30 per month is made for such costs."

QUESTIONS PRESENTED

1. Whether, in the administration of the Aid to Families with Dependent Children (AFDC) program the use of a standardized statistically based work expense allowance, as described in Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual, violates Title IV of the Social Security Act when read as a whole or whether such an allowance is a permissible method to be used to "take into consideration" any such work expenses and determine their reasonableness.

2. Whether the decisions below in this case conflict with the decisions of this Court regarding (a) the weight to be given to administrative interpretations by the responsible federal agency and (b) the scope of the discretion of the secretary of an executive department.

STATEMENT OF THE CASE

The petitioners, Con F. Shea, et al., are responsible for the administration of the public assistance and social services programs in Colorado. The respondents, Ascen-

sion Vialpando, et al., were, at various times, applicants and recipients under the Aid to Families with Dependent Children (AFDC) program in Colorado.

This is not a class action. (App. 51 and 88).

Eligibility or continued eligibility for AFDC benefits is, to a large degree, determined by the need of the applicant or recipient. The AFDC program is more fully described in *King v. Smith*, 392 U.S. 309 (1968), and *Rosado v. Wyman*, 397 U.S. 397 (1970).

In general, need is determined by comparing the applicant's or recipient's net income[1] to the state's standard of need.[2]

Under the Social Security Act, a state plan for Aid to Families with Dependent Children must, inter alia, "provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . as well as any expenses reasonably attributable to the earning of any such income. . ." 42 U.S.C. §602(a)(7).

Prior to July of 1970, the Colorado regulations governing the Aid to Families with Dependent Children program provided a work expense allowance which included, but was not limited to, the actual cost of transportation, within certain limits. This included "purchase, repair, or

[1] Briefly, the computational sequence is as follows:

Gross Income
Less work incentive ($30 + 1/3 of the balance)
Sub Total
Less mandatory payroll deductions
Sub Total
Less allowable work expenses
Net Income

[2] The states have the option of comparing net income to percentage of the standard of need if insufficient funds are appropriated to pay 100% of the standard of need. The concept of standard of need is more fully described in **Rosado v. Wyman, supra.**

upkeep of a vehicle, providing it is essential to retain employment and the plan therefore is approved by the county department." The policy was changed in May of 1970 to a maximum transportation work expense allowance of either $30 per month, if a car was needed to get to or from work, or the actual expenses of public transportation. In July of 1970, the Colorado work expense allowance regulation was changed so that it consisted of (1) mandatory payroll deductions, plus (2) child care expenses, plus (3) $30. The $30 figure was based upon a statistical analysis of a statewide survey of actual work expenses. (App. 40-41U)

The change in the state regulation in July of 1970 was considered to be consistent with the Social Security Act for several reasons. (These reasons are summarized and discussed more fully, with citations, in later sections of this brief). The change was approved by the United States Department of Health, Education, and Welfare (HEW). The method for taking work expenses into consideration and determining their reasonableness is not specified in either the Social Security Act or the federal regulations. The figure of $30 per month was based upon a statistical analysis of all actual work expenses of persons in the Aid to Families with Dependent Children program. (App. 40-41U) The Social Security Act, when read as a whole, makes many requirements which must be reconciled. The program must be statewide. It should be efficiently administered. Error in administration should be minimized. The state is to administer the program to provide assistance and services "as far as practicable" to eligible persons. In *Rosado v. Wyman, supra,* the court approved the use of standardized amounts in another subsection of 42 U.S.C. §602. The long-standing administra-

tive interpretation of HEW has been to permit the use of standardized work expense allowances for some items of work expenses.

Prior to and after July of 1970, Mrs. Vialpando had a 1968 Volkswagon. Prior to July of 1970, the county department allowed her a work expense allowance which included $47.30 per month for mileage and $63.81 for payments on the car.

The dispute in this case arose when the amended work expense allowance was applied to Mrs. Vialpando's case. Since the $30 statistically based standard allowance was less than the $47.30 in mileage plus $63.81 in car payments which she was previously allowed, her net income was increased above the standard of need and she was found to be ineligible for AFDC. The question of whether or not $30 is sufficient is not in question, the issue is whether or not the use of a standardized work expense allowance is permissible.

Mrs. Vialpando, and others, filed suit for injunctive and declaratory relief under 42 U.S.C. §1983 on or about July 27, 1970, in the United States District Court for the District of Colorado. Jurisdiction was asserted under 28 U.S.C. §§1343(3) and (4), 2201 and 2202. (App. 11-17)

The District Court decided the matter in favor of the plaintiff. (App. 42-49, 78-83) The Defendants appealed to the United States Court of Appeals for the Tenth Circuit. The Court of Appeals decided in favor of Mrs. Vialpando (App. 87-94). The State and County parties petitioned for a writ of certiorari which was granted by this Court.

SUMMARY OF ARGUMENT

Colorado's statistically based standard work expense allowance is fully stated in Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual. It complies with the requirements of 42 USC §602(a)(7) that the state "shall in determining need, *take into consideration* . . . any expenses reasonably attributable to the earning of any such income." [Emphasis added]

The statute does not specify a method for considering work expenses. The words "take into consideration" and 42 USC §1302 give the Secretary of the U.S. Department of Health, Education and Welfare, (hereinafter referred to as "HEW") discretion in determining what methods comply with the statute. HEW has approved not only the concept of a statistically based work expense allowance, but also Colorado's Rule 4313.13. These interpretations should be given great weight. The decision of the Court below should be reversed.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE CLEAR MEANING OF THE STATUTE INVOLVED.

A. *The Statute*

The language of the following statute governs the outcome of this case:

> "A state plan for aid and services to needy families with children must . . . provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children

. . . as well as any expenses reasonably attributable to the earning of any such income." 42 U.S.C. §602(a)(7).

B. *The Statutory Requirement to "take into consideration" Certain Work Expenses*

A time-tested and cardinal rule of statutory construction is that every statute must be read and understood as a whole. "Provided the interpretation is reasonable and not in conflict with legislative intent, effect and meaning must, if possible, be given to the entire statute and part and word thereof." 82 C.J.S. Statutes Section 364 (1953). See also *Ginsburg and Sons v. Popkin,* 285 U.S. 204 (1932). The Court of Appeals seemed to give entirely no effect to the words "take into consideration." In 42 U.S.C. §602(a)(7), the words "take into consideration" mean just that and no more. The statute could have said "deduct all work expenses from gross income" or some other specific requirement; however, it says "take into consideration." Accordingly, the decision of the court below is erroneous as a matter of law.

C. *The States have Considerable Latitude in Allocating Funds Available for Welfare Purposes*:

The States are only required to furnish financial assistance and rehabilitation and other services "as far as practicable." 42 U.S.C. §601.

Under federal law, financial eligibility and the determination of financial need is left to the states. 42 U.S.C. §602(a)(7) and 45 CFR §233.20. During the period relevant to this case Colorado made this determination in the AFDC program by funding the budgetary need. 119-9-5, C.R.S. 1963 (1969 Perm. Cum. Supp.) It is therefore appropriate for the state to have considerable discretion in

determining the method by which it will take work expenses into consideration.

The subsection in question, 42 U.S.C. §602(a)(7), requires that a state "take into consideration" certain work expenses and determine whether they are "reasonably attributable" to the earning of income. The statute does not prescribe a method for either taking work expenses into consideration or determination their reasonableness[3] This Court has recognized the need for allowing the states considerable latitude in allocating the limited funds available for welfare purposes. *King v. Smith,* supra, *Dandridge v. Williams,* 397 U.S. 471 (1970), and *Jefferson v. Hackney,* 406 U.S. 435 (1972).

In *Dandridge v. Williams,* supra, a system of maximum grants was upheld as being valid by this Court as a method of reconciling the demands of the needy citizens of a state with the resources available to meet those demands. The court quoted extensively from *King v. Smith,* supra.

"In *King v. Smith,* supra, we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, to set the level of benefits and the standard of need.' . . . We described the AFDC enterprise as 'a scheme of cooperative federalism,' . . . and noted carefully that '[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of

[3] Nowhere in the federal law is it required that individual computations be made in each applicant's case to total all expenses. It is a procedure similar to the allowance of a $750.00 exemption for income tax purposes for each child. Certainly many, if not all, parents spend more than $750.00 per year to feed, clothe, educate and raise their children. The principle is well established and not unfair.

funds it devotes to the program.' . . . Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare program." *Dandridge,* at 478.

"The strong policy of the statute [Social Security Act] in favor of preserving family units does not prevent a State from sustaining as many families as it can, . . ." *Dandridge* at page 480. Colorado, then, in line with the opinion in *Dandridge,* has imposed a reasonable flat allowance on the employment expenses of its working AFDC recipients, based upon a statistical study of all work expenses claimed by recipients. If a State can set its own standard of need and pay any percentage of that standard, it can also impose a limit upon the component variables of the grant.

In applying the *Dandridge* concept to this case, it should be noted that the appropriation that the Colorado Legislature can make for welfare in general and for the AFDC program in particular is limited. The expenditure of these funds must be divided between administration and actual benefits to recipients. If a disproportionate amount of money is spent for administration, either the assistance or services aspects of the various categorical programs will suffer. While the $30 average work expense allowance, when multiplied by the number of working recipients, would enable the defendant and the state legislature to approximate the amount of work expenses in the AFDC program, this would in no way represent the amount of additional administrative cost which would be required if individual itemized consideration of each individual's work expenses were required. This additional administrative expense would cause the diversion of funds

from the benefit portion of the Colorado welfare programs. See *Jefferson v. Hackney,* supra.

This Court has stated that, "It is true that each of the [categorical assistance] programs is intended to assist the needy, but it does not follow that there is only one constitutionally permissible way for the State to approach this important goal." *Jefferson v. Hackney,* supra.

D. *This Court has Previously Approved of the Use of Statistical Averaging in Another Subsection of the Statute in Question.*

This Court previously allowed averaging in welfare computations in *Rosado v. Wyman,* supra, where statistical averaging was used by New York to develop a flat grant. The purpose of the flat grant was to promote administrative efficiency. This Court did prohibit the use of a flat grant to reduce the standard of need.

HEW advised Colorado on the basis of *Rosado,* that statistical averaging of employment expenses was similarly permissible. Colorado, in the process of averaging employment expenses, took the entire array of employment expenses into consideration. Colorado's statistically based work expense rule does not violate federal law, but, rather is a reasonable interpretation and application of it.

The use of statewide standard of need permitted by this Court in *Rosado v. Wyman,* supra, is not legally distinguishable from the use of a standard work expense allowance based upon a statistical analysis of all actual work expenses.

II. THIS COURT HAS HELD ON MANY OCCASIONS THAT THE INTERPRETATION BY A FEDERAL AGENCY OF THE STATUTES THAT IT ADMIN-

ISTERS IS ENTITLED TO GREAT WEIGHT. THE COURT BELOW HAS NOT GIVEN DUE CONSIDERATION TO THE INTERPRETATION BY THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE OF THE SOCIAL SECURITY ACT AND THE REGULATIONS PROMULGATED PURSUANT TO IT.

A. *Introduction.*

The U.S. Department of Health, Education and Welfare which administers the AFDC program has interpreted 42 U.S.C. §602(a)(7) to allow Colorado to average employment expenses because the use of such a method contributes to the efficient and fair administration of the AFDC program.

Under ideal conditions, the administration of the AFDC program is a monumental and most significant undertaking. Colorado is sensitive to the need to be careful in the determination of eligibility for each applicant. It is essential that Colorado be allowed to determine eligibility correctly without subjective judgments. Clearly defined criteria for all eligibility requirements are essential. The State must provide standards and guidelines to the county departments of social services for use in determining eligibility.

If each item of work expense is considered separately in each case in each county, the program will not be uniform on a statewide basis. If the facts presented by Mrs. Vialpando were presented to another eligibility technician in the same county or in another county, a decision could easily have been reached that the cost of purchasing an automobile was either unnecessary if local employment were sought, or merely a personal convenience and

not an "expense reasonably attributable to the earning of . . . income."

The Department of Health, Education and Welfare must audit the states to ascertain that they have complied with the requirements of the AFDC law. This includes review of individual case files and review of how the states determine eligibility. The states have a substantial interest in being permitted to use a fixed average amount, rathen than being vulnerable to the subjective judgment of an HEW auditor.

A flat work expense allowance also allows the applicant or recipient to plan ahead, knowing what amount will be allowed for employment expenses. He or she will then know in advance, with a fair degree of certainty, the amount of the AFDC grant for each month.

B. *This Court has held that the Agency Interpretation of the Social Security Act is Entitled to Great Weight.*

Congress and this Court have firmly established that the Secretary of a federal executive agency has considerable discretion and statutory interpretations by such agencies are entitled to great weight. "When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall v. Tallman,* 380 U.S. 1 (1965), *Lewis v. Martin,* 397 U.S. 552, 559 (1970), *United States v. City of Chicago,* 400 U.S. 8 (1970).

The Secretary of the United States Department of Health, Education, and Welfare (referred to hereafter as the "Secretary") has broad discretion. 42 U.S.C. §1302.

C. *The Secretary Must Harmonize Several Provisions of the Social Security Act in Determining Whether or Not to Approve a State Plan which Utilizes a Standardized Work Expense Allowance.*

The Social Security Act must be read as a whole. See *Ginsburg and Sons Inc. v. Popkin*, 285 U.S. 204 (1932). In this case, the Social Security Act creates several requirements which must be reconciled by the Secretary or his designee. *Udall v. Tallman, supra*, at 9.

1. *The Requirement for a Statewide Program*:

The Secretary must ensure that an AFDC state plan will provide that the program will be in effect in all political subdivisions of the state. 42 U.S.C. §602(a)(1). This requirement carries with it a mandate for uniformity throughout the state which is not possible with subjective item by item determination of whether or not a particular expenditure by an individual was reasonably attributable to the earning of income.

2. *The Requirement for Efficient Administration*:

Under 42 U.S.C. §602(a)(5) a state plan must provide for "such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan . . ." The use of a standardized work expense allowance reduces administrative costs and errors[4] in determining eligibility.

[4] New federal regulations have been published which will impose financial penalties upon the states for errors in eligibility determinations. 38 Fed. Reg. 8743 (1973). The new regulations impose extremely strict requirements for "zero error." A standardized work expense allowance would be necessary if errors are to be avoided.

3. *The Requirement for Prompt Assistance:*

Assistance must be provided with "reasonable promptness to all eligible individuals." 42 U.S.C. §602 (a)(10). The delays inherent in item by item consideration of work expenses can be avoided by using a standardized allowance.

D. *The Secretary's Interpretation of* 42 USC §602 (a)(7) *Was Stated In The Memorandum of The United States as Amicus Curiae In This Case*

The Memorandum for the United States as Amicus Curiae supporting the Petition for the Writ of Certiorari in this case stated on pp. 6-8:

> "Moreover, as Blackstone noted long ago (1 Blackstone, Commentaries 59 (Philadelphia, 1866), '[t]he fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made. . . .' The provisions in Section 402(a)(7) relating to income and work expenses were enacted separately. The original statutory requirement that 'income' be taken into consideration was designed to ensure that the respective incomes of all members of the family be considered in assessing the family's need; the clear 'will of the legislator' was that the particular family's actual income was to be computed. After several years' experience with AFDC programs, Congress then amended the statute (Section 106 of P.L. 87-543, 76 Stat. 188) to require that work expenses be considered in determining need; this was done in recognition of the fact that families with working members incur not only the family living expenses normally included within the state's standard of need but additional work-related expenses as well.

Congress was aware that work expenses were simply additional items of living expense incurred by virtue of employment: as the Senate Finance Committee noted in recommending passage of the work expenses amendment, 'if these work expenses are not considered in determining need, they have the effect of . . . reducing the amount available for food, clothing, and shelter.' S. Rep. No. 1589, 87th Cong., 2d Sess., at 18. It has therefore been the judgment of the Secretary that work expenses may be taken into consideration by the states in the same manner as other living expenses, *i.e.*, 'on the basis of statistical averages.' *Rosado v. Wyman*, 397 U.S. 397, 419.

This construction of the statute satisfies both the specific legislative purpose of ensuring consideration of the special needs of families with working members and the more general objective of efficient administration. And it is, of course, a long-standing principle of statutory interpretation that 'the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong.' *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367, 381.

In rejecting the Secretary's construction, the courts below stressed that the state requires 'any' work expenses to be taken into consideration and that the report of the Senate Finance Committee indicated that such expenses were to be taken 'fully into account.' We do not believe that the words 'any' and 'fully' support the conclusion of the courts below. The Secretary does not construe the statute as permitting an arbitrary work expense allowance; under

the Secretary's construction, to be valid, an allowance must be based on a statistically determined average. If the full range of reasonably foreseeable work expenses is included in the statistical base, the allowance so determined meets all legislative objectives reasonably implicit in the requirement that "any' expense be taken into consideration; and that the legislative history relied upon by respondents shows nothing more than a congressional intent that a state choosing to use a standard work expense allowance must consider all likely work expenses, *i.e.*, 'take these expenses fully into account' (S. Rep. No. 1589 supra at 18), in establishing that allowance."

E. *The Secretary in Harmonizing the Foregoing Provisions has Consistently Approved the Use of Standardized Work Expense Allowances Since* 1957.

State Letter 291, dated March 11, 1957, was sent "TO STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PLANS," by the Social Security Administration of HEW. It transmitted various new pages for the *Handbook of Public Assistance Administration* (hereafter referred to as the "Handbook"), including Section 3140 "Specific Applications — Income and Resources 1, Employment Expenses." This regulation permitted a flat work expense allowance for food, clothes, and personal incidentals. (App. 3).

On July 25, 1962, 42 U.S.C. §602(a)(7) was amended by Section 106 (b) of Public Law 87-543 to provide for taking work expenses into consideration.

On April 22, 1964, the *Handbook of Public Assistance Administration* was amended. The amended *Handbook* reaffirmed the use of standardized work expense allow-

ances for food, clothing, and personal incidentals. (App. 4-6).

On July 17, 1968, with the approval of Secretary Wilbur J. Cohen, Interim Policy Statement No. 4 was published. (33 Fed. Reg. 10230) (1968). It required the disregard of income equal to expenses reasonably attributable to the earning of income. It replaced Section 3140 of the *Handbook*. However, the *Handbook* provisions are still used to interpret the federal regulations and the Social Security Act.

The new regulations reflecting the comments received on Interim Policy No. 4 (33 Fed. Reg. 10230) (1968) were published on January 29, 1969 (34 Fed. Reg. 1394) (1969).

On September 26, 1969 HEW sent a letter "To State Agencies Administering Approved Public Assistance Plans." This letter approved of standardized work expense allowances and provided tables for applying such allowances. (App. 7-10).

In 1970, HEW approved Colorado's $30 statistically based standard work expense allowance, which became effective in July of 1970. (App. 53, 69-73).[8]

The Brief of the United States as Amicus Curiae filed in *Adams v. Parham*, Civil Action No. 16041 (N.D.

[8] In Colorado, new rules or amendments to existing rules, are referred to by Transmittal Letter (T.L.) numbers.

Using the T.L. numbers shown on the face of a series of amendments to the rules, one can determine the sequence in which the rules were adopted by the State Board of Social Services. The Transmittal Letter is a separate document which transmits the new rule material to the County Welfare Departments and other interested persons. (App. 53-56).

Often, a rule is also a state plan provision. Colorado's statistically based work expense allowance was adopted as Rule 4313.13 by the State Board of Social Services. The particular text of the rule which is involved in this case was accompanied by T.L. 1033-A. (App. 70-72). This rule was approved as a state plan amendment by HEW. (App. 69-70).

Ga. filed April 14, 1972) described the Secretary's interpretation of the Social Security Act which permitted the use of standardized work expense allowances. (This brief is printed as Appendix "E" to the State of California's brief as amicus curiae in support of Colorado's petition for certiorari in the instant case.)

The Secretary or his authorized representatives has approved some form of mandatory standard work expense allowance in 35 states. See the Memorandum for the United States as Amicus Curiae in the instant case, pp. 5 and 9.

This Court should reinforce its decisions which emphasize that the long-standing interpretations of the Social Security Act by the officers charged with its administration are to be given great weight and deference. *Udall v. Tallman*, supra, *Lewis v. Martin*, supra., and *U.S. v. City of Chicago*, supra.

III. COLORADO WAS JUSTIFIED IN RELYING UPON THE INTERPRETATIONS OF THE SOCIAL SECURITY ACT AND THE IMPLEMENTING REGULATIONS MADE BY THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE WHICH PERMIT THE USE OF STANDARDIZED WORK EXPENSE ALLOWANCES.

A. *Colorado Complied With the Relevant Regulations Published in the Federal Register.*

Regulations have been published in the Federal Register and codified in the Code of Federal Regulations which implement 42 USC §602(a)(7). 45 CFR §233.20.

The first of the relevant subparagraphs of this regulation requires that state plans in the AFDC program:

> "Provide that, in determining the availability of income and resources, the following will not be included as income: (a) Income equal to expenses reasonably attributable to the earning of income;" 45 CFR §233.20(a)(3)(iv).

The Colorado statistically based work expense allowance is a permissible method for determining those work expenses which are "reasonably attributable to the earning of income." An amount of income equal to this $30 allowance is not included as income in determining budgetary need.

Another way of approaching this problem is to start with the assumption that the work expense allowance is intended to encourage recipients to become self-sufficient wage earners. If the amount of work expenses is constantly increased, an individual can remain permanently eligible for assistance. There is a built-in "incentive to consume" if some definition is not given to the words "reasonably attributable." A standard allowance accomplishes this.

The next relevant subparagraph concerns the disregard of earned income and provides that:

> "With reference to commissions, wages, or salary, the term 'earned income' means the total amount, irrespective of personal expenses, such as income tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers." 45 CFR 233.20(a)(6)(iv).

These specific types of expense are either included in the statistically based work expense allowance in Colorado

or are separately disregarded. Accordingly, this regulation has been complied with.

The last relevant portion of the regulations published in the Code of Federal Regulations concerns the sequence of the arithmetic involved in determining the amount of income that a person receives. A State Plan must:

> "Provide that the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of 'earned income,' and all work expenses personal and non-personal will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment." 45 CFR §233.20(a)(7).

Since this is merely a procedural regulation, it has omitted the key words of the statute which limit the disregard of income to that which is "reasonably attributable to the earning of any such income." Accordingly, the word "all," as used in the quoted regulation, is qualified by the statutory terms, and the Colorado statistically based allowance provides the means for disregarding income in full compliance with the statute and regulations.

B. *Other Regulations Promulgated by HEW which were not Published in the Federal Register Were Properly Relied Upon by Colorado.*

1. *Introduction.*

An interpretation of the statute involved and the application of the foregoing regulations, however, were not the only basis upon which Colorado based its conclusion, that a statistically based work expense allowance would fully comply with federal law.

In administering the Colorado AFDC State Plan, the state complies with not only the specific requirements stipulated in the pertinent title of the Social Security Act and the regulations published in the Federal Register, but also, the "other applicable official issuances of the Department [of HEW]." 45 CFR §201.2. "After approval of the original plan by the [Social and Rehabilitation] Service, all relevant changes, required by new statutes, rules, regulations, *interpretations,* and court decisions, are required to be submitted currently so that the service may determine whether the plan continues to meet federal requirements and policies." [emphasis added] 45 CFR §201.3.

Colorado has received various communications from HEW which appear to be "official issuances" and "interpretations." These communications have been entitled "State Letters" and "Assistance Payments Memoranda." They also appear to be "rules" within the meaning of 5 U.S.C. §551(4). As "rules" these communications could be considered as amendments to the rules published in the Federal Register. In addition, HEW has specifically approved Colorado's statistically based work expense allowance as a state plan amendment (App. 69-72 and See n.5 supra).

2. *The "Handbook of Public Assistance Administration," "State Letters" and "Assistance Payments Regional Memoranda" Need Not be Published in the Federal Register.*[6]

A circular issued by the U.S. Department of Housing and Urban Development under the agency's rule-making power and intended by the agency to be mandatory was found by this Court to be binding upon a local housing

[6] The arguments based upon the applicablity of the Administrative Procedure Act were not presented to the court below.

authority. *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268 (1969).

In a similar case involving a HUD Circular, the *Thorpe* case was relied upon and it was held that the exemption under 5 U.S.C. §553(a)(2) was applicable to the Circulars. *Housing Authority of the City of Omaha, Nebraska v. United States Housing Authority*, 468 F. 2d 1, 10 (8th Cir. 1972). An unpublished case in this area, *Worrell, et al., v. Sterrett, et al.*, CCH Pov. L.R. ¶10, 575 (N.D. Ind. 1969), held that a provision in HEW's Handbook of Public Assistance Administration which had not been published in the Federal Register was binding upon the State.

The "Handbook of Public Assistance Administration," "State Letters" and an "Assistance Payments Regional Memorandum" were sent by HEW to the various states. These have been discussed above and reprinted in the Appendix to this brief (App. 3-10, 84-86). They permit the use of a standardized work expense allowance. These letters were published under HEW's rule-making power but were not published in the Federal Register.[7] However, the rule-making procedural re-

[7] Agencies of the federal government are required to publish in the Federal Register only those descriptions, statements, and rules described in 5 U.S.C. §552 which are "for the guidance of the public." The Attorney General of the United States was of the opinion that "The term 'public' would not seem to embrace states. For example, the Federal Security Agency sends interpretive guides to states to assist them in complying with the requirements of the unemployment compensation provisions of the Social Security laws. Such guides need not be published since they are not for the use of the "public" but only for the state governments. **Attorney General's Manual on the Administrative Procedure Act**, p. 22, (1947).

In the AFDC program, individual recipients do not file applications with the U.S. Department of Health, Education and Welfare under the Social Security Act and its implementing regulations. Further action is required by the state before material in a State Letter or federal regulation can affect the public. Accordingly, State Letters and Assistance Payments Regional Memoranda need not be published in the Federal Register before a state can rely upon their contents.

quirements of 5 U.S.C. §553 (formerly 5 U.S.C. §1003) do not apply to "a matter relating to public . . . grants, benefits or contracts." 5 U.S.C. §553(a)(2). *Rodriguez v. Swank*, 318 F. Supp. 289 (N.D. Ill. E.D. 1970), aff'd. 403 US 901 (1971).

Title IV of the Social Security Act is captioned "Grants to States For Aid and Services to Needy Families with Children and for Child Welfare Services." Since a grant program is involved, "State Letters" do not have to be published in the Federal Register.

The regulations, State Letters, Assistance Payments Regional Memoranda, and Brief of the United States as Amicus Curiae in *Adams v. Parham* indicate that the Secretary has exercised his broad discretion and implemented, or in the alternative, interpreted, the Social Security Act to permit the use of standardized work expense allowances.

C. *Colorado's Work Expense Allowance was Approved by HEW.*

The state regulation in question, Rule 4313.13 of the Colorado Division of Public Welfare Staff Manual, is part of Colorado's State Plan. It was approved by the U.S. Department of Health, Education and Welfare pursuant to 45 CFR §201.3 (App. 69-72 and see n.5 supra).

IV. THE OPINIONS OF THE COURTS BELOW SERIOUSLY HINDER THE EFFECTIVE ADMINISTRATION OF THE SOCIAL SECURITY ACT.

Apart from the lower court decision in this case, a considerable body of lower court case law has developed in related cases. Some of these courts have ruled in favor

of standardized work expense allowances.[8] Others have not.[9] The overall effect of these decisions is to seriously hinder the effective administration of the Social Security Act.

[8] The California Court of Appeal for the Third Appellate District on November 13, 1972, reversed the trial courts' order granting a preliminary injunction against the enforcement of the provisions of Sec. 11451.6 of the Welfare and Institutions Code. The cited statute provided for a fifty dollar per month work expense allowance, plus reasonable and necessary costs of child care. On January 17, 1973, the California Supreme Court granted hearing. **Conover v. Hall, 104 Cal. Reptr. 77 (Cal. App. 1972)**, hearing granted January 17, 1973.

In the form of dicta, a three judge federal district court approved New Jersey's fifty dollar per month work expense allowance and said that "if a state may use statistical averages to determine the various components of need, it may also do so to compute business expenses." The issue was not presented to the U.S. Supreme Court. **Engleman v. Amos**, 333 F. Supp. 1109 (D.N.J. 1970), modified on other grounds. 404 U.S. 23 (1971).

The U.S. District Court for the Eastern District of Michigan approved a settlement approved by the U.S. Department of Health Education and Welfare which included a $40.00 maximum work expense allowance. **Michigan Welfare Ri[illegible] Organization v. Houston**, Civil Action No. 34529 (E.D. Mich. filed April 30, 1971).

[9] In **Adams v. Parham**, supra, a single District Court judge held that a $35 per month flat work expense allowance was invalid. The Court ruled upon the District Court decision in the present case and upon **Williford v. Laupheimer**, infra.

In **Campagnuolo v. White**, Civil Action 13968 (D. Conn. filed June 22, 1972) a single federal district judge held that a $60 per month flat work expense allowance for full time employment and a $40 per month allowance for the expenses resulting from part time employment were invalid if recipients were not allowed to prove and deduct actual expenses in excess of the flat amounts. The Second Circuit has held that the state could not limit the types of work expenses to mandatory payroll deductions and child care expenses. **Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare**, 448 F. 2d 209 (2d Cir. 1971).

County of Alameda v. California, 97 Cal. Reptr. 385, 5 Cal. 3d 730, 488 P.2d 953, (1971), Appeal Dismissed 406 U.S. 913 (1972), involved state work expense allowance regulations which provided for standard deductions ranging from $6 to $25 per month. The California Supreme Court invalidated the regulation. The frequently cited case of **Williford v. Laupheimer**, 311 F. Supp. 720 (E.D. Pa. 1969) involved a maximum, rather than a statistically based flat grant. Accordingly it is distinguishable.

New federal regulations have been published which will impose financial penalties upon the states for errors in eligibility determinations. 38 Fed. Reg. 8743 (1973). The new regulations impose extremely strict requirements for "zero error." A standardized work expense allowance would be necessary if errors are to be avoided.

In **Anderson v. Graham**, Civil Action No. CV 72-L-176 (D. Nebraska decided April 4, 1973) the Court invalidated the Nebraska $25 standard work expense allowance. This case is now pending before the United States Court of Appeals for the Eighth Circuit.

The fact that issues in this case or similar issues have been presented to a substantial number of courts with varying results indicates the importance of the questions and the difficulty which state directors of public welfare have in determining what is permissible under the Social Security Act. The Circuit Court opinion in this case can be interpreted to mean that the states cannot rely upon instructions and interpretations from HEW.

V. CONCLUSION

The Court of Appeals' decision is in conflict with applicable decisions of this Court. The states are constantly faced with the question whether to follow instructions from HEW (and risk being sued by recipients) or not following such instructions (and risk losing federal funds).[10] This Court has been rather uniform in upholding instructions from the responsible federal agency in the latter context. In this case, this Court is being asked to resolve the substantial federal question of whether welfare recipients can successfully sue a state when the state is acting within its own broad discretion and is using a method approved by HEW to comply with the Social Security Act.

In view of the foregoing, the petitioners submit that the Court of Appeals and the District Court misconstrued, misapplied, or misconceived the applicable decisions of this Court and, in effect, ignored the Secretary's

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[10] Many federal agencies administer grant programs utilizing "circulars", "state letters", "policy and procedure memoranda and other similarly designated types of communications which appear to be "rules" under 5 U.S.C. §551(4). The Court's decision in this case can be of considerable assistance to state and local agencies in evaluating the legal effect of such documents.

interpretation and refused to recognize the Secretary's discretionary powers. Accordingly, the decision of the Court below should be reversed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 72-1513

CON. F. SHEA, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Petitioners,

v.

ASCENSION VIALPANDO, *et al.*

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	8
ARGUMENT	10
I. The Welfare Department of the State of Colorado Must Deduct Any and All Reasonable Work-Related Expenses in Determining the Amount of Net Income Actually and Currently Available to AFDC Recipients	10
A. The Clear Meaning of the Statutory Language of §402(a)(7) Requires the Full Disregard of Any and All Expenses Reasonably Attributable to the Earning of Income	10
B. The Legislative History of §402(a)(7) Reveals That All Reasonable Work Expenses Are To Be Fully Deducted in Determining the Amount of Net Income Actually and Currently Available to AFDC Applicants and Recipients	18
C. Neither *Rosado v. Wyman* Nor Mere Claims of Administrative Efficiency Justify an Averaging of Work Expenses Under §402(a)(7)	24
D. Federal Regulations, Promulgated Contemporaneously With the Enactment of the §402(a)(7) Work Expense Disregard and Codified Thereafter, Require the Disregard of All Reasonable Work-Related Expenses	34
CONCLUSION	38
APPENDICES	1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h

Page

TABLE OF AUTHORITIES

Cases:

Adams v. Parham, ___ F. Supp. ___ (N.D. Ga., Civil Action No. 16041) (April 14, 1972) 17, 30, 32

Addison v. Holly Hill, 322 U.S. 607 (1944) 12

Amos v. Engleman, 335 F. Supp. 1199 (D. N.J. 1970) *aff'd*, 404 U.S. 23 (1971) 16, 17

Anderson v. Graham, ____ F.2d ____ (8th Cir. Dec. 20, 1973) 17, 30, 32, 38

Arizona Dep't. of Public Welfare v. HEW, 449 F.2d 456 (9th Cir. 1971), *cert. denied*, 405 U.S. 919 (1972) 18

Campagnuolo v. White, ____ F. Supp. ____ (D. Conn., No. 13,968) (June 22, 1972) 17, 18, 30, 32

Conover v. Hall, Civil Action No. 215815 (Sacramento County, Calif. Super. Ct.) (Oct. 8, 1971) 16, 17, 30, 32

Connecticut State Department of Welfare v. HEW, 448 F.2d 209 (2d Cir. 1971) 15, 16, 18, 38

County of Alameda v. California W.R.O., 97 Calif. Rptr. 384, 5 Cal. 3d 730, 488 P.2d 953 (1951) *appeal dismissed*, 405 U.S. 913 (1972) 4

Dandridge v. Williams, 397 U.S. 471 (1970) 26

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In re Kent's Estate, 6 Cal.2d 154, 57 P.2d 901 (1936) 17

King v. Smith, 392 U.S. 309 (1968) 3, 13, 18, 26

Knouse v. Nimocks, 8 Cal.2d 482, 66 P.2d 438 (1937) 17

Jefferson v. Hackney, 406 U.S. 535 (1972) 18, 27

Lampton v. Bonin, 299 F. Supp. 336 (1969) 26

Lewis v. Martin, 397 U.S. 552 (1970) 3, 7, 13

Miro v. Superior Court, 5 Cal. App.3d 97, 84 Cal. Rptr. 874 (1970) 17

Page

Norwegian Nitrogen Product Co. v. United States, 288 U.S. 294 (1933) 36

Remillard v. Carleson, 406 U.S. 598 (1972) 3, 18

Rosado v. Wyman, 397 U.S. 397 (1970) ..... *passim*

Townsend v. Swank, 404 U.S. 282 (1971) 3, 18, 37

United States v. Bass, 404 U.S. 335 (1971) 10

U.S. v. Leslie Salt Co., 350 U.S. 383 (1956) 10, 37

Vialpando v. Shea, 475 F.2d 731 (10th Cir. 1973) ... 29, 33, 38

Williford v. Laupheimer, 311 F. Supp. 720 (W.D. Pa. 1969) 15, 16, 18, 32

Federal Statutes:

26 U.S.C. § 141 33

42 U.S.C. § 302(a)(10) 3
§ 601-610 2
§ 601 ..... 2, 25, 26
§ 602(a)(1) 33
§ 602(a)(3) 33
§ 602(a)(5) 33
§ 602(a)(7) ..... *passim*
§ 602(a)(8) 1a, 5d
§ 602 (a)(8)(A)(ii) 22
§ 602(a)(8)(B)(i) 12
§ 1202(a)(8) 3
§ 1352(a)(8) 3
§ 1382(a)(14) 3
§ 1396(a)(10) 6

Social Security Act of 1935:

§ 2(a)(10) 2, 3
§ 402(a)(7) ..... *passim*
§ 402(a)(8) 22
§ 402(a)(8)(A)(ii) 22
§ 402(a)(8)(B)(i) 12

		Page
	§ 402(a)(23)	25, 26, 27, 28, 30
	§ 1002(a)(8)	3
	§ 1402(a)(8)	3
	§ 1602(a)(14)	3
	§ 1612(b)(4)(a)(ii)	4
Pub. L.	§ 71-379, §401(b)	13
	§ 76-379, §401(b)	14
	§ 87-543, §106(b)	12, 14
	§ 90-248	12
	§ 92-603, §301	4

Federal Regulations:

45 C.F.R.	§ 233.20(a)(1)	25, 26
	§ 233.20(a)(2)(v)	34
	§ 233.20(a)(3)(ii)(b)	10, 35
	§ 233.20(a)(3)(ii)(c)	13
	§ 233.20(a)(3)(iv)(a)	10, 11, 35
	§ 233.20(a)(3)(viii)	13
	§ 233.20(a)(6)(iv)	35
	§ 233.20(a)(7)(i)	35
	§ 233.20(a)(7)(ii)	28

HEW Handbook of Public Assistance Administration, Part IV, §3140(1) 9, 35, 36

HEW State Letter:

No. 4 (April 30, 1942) 19
No. 291 (March 11, 1957) 19

State Regulations:

Colorado Welfare Manual §4313.13 . . . . . 2, 4, 5, 7, 18, 39
§C-4421.2-.23 32

Congressional Materials:

Hearings Before the Committee on Finance, United States Senate, 87th Cong., 2d Sess. (May 1962) 20-21

	Page
Hearings on H.R. 120032 Before the House Committee on Ways and Means, 87th Cong., 2d Sess. (Feb. 1962)	19, 20
H.R. 1, 92d Cong., 1st Sess., §401	23
H.R. 3153, 93d Cong., 1st Sess., §162	24
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H. Rep. 92-231, Report on H.R. 1, 92d Cong., 1st Sess. (1971)	24
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v.

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Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENTS

OPINIONS BELOW

In addition to the opinion of the United States Court of Appeals for the Tenth Circuit, reported at 475 F.2d 731, there have been two memorandum opinions issued by the United States District Court for the State of Colorado. *Vialpando v. Shea* (D. Colo. Civil Action No. C-2449, Jan. 13, 1972) (Single Appendix p. 42); *Vialpando v. Shea* (D. Colo. Civil Action No. C-2449, March 9, 1972) (Single Appendix p. 78). Neither District Court opinion is published in Federal Supplement.

QUESTION PRESENTED

Whether, consistent with the requirement of §402(a)(7) of the Social Security Act that "any expenses reasonably attributable to the earning" of income be taken into consideration, Colorado may, in determining financial eligibility and the amount of benefits under its AFDC program, refuse to consider those expenses which are reasonably attributable to the earning of income but in excess of a flat $30 monthly allowance, as permitted by Colorado Welfare Manual §4313.13.

STATEMENT OF CASE

Pursuant to the Social Security Act of 1935, 42 U.S.C. §301 *et seq.*, the State of Colorado cooperates with the federal government in providing welfare assistance to needy persons under Colorado's "state plan" consisting of state statutes and regulations. One of the federally-aided public assistance programs is Aid to Families with Dependent Children (AFDC) which is contained in Title IV of the Social Security Act, 42 U.S.C. §§601-610. The declared purpose of the AFDC program is to provide financial aid to needy children and their parents or relatives with whom they are living, to help strengthen family life, and to help such parents or relatives obtain capacity for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. 42 U.S.C. §601.

Although the states are not required to participate in the AFDC program, those that do must comply with the requirements of the Social Security Act. In return for approximately $24,000,000 yearly which it receives from

the United States government,[1] Colorado must provide AFDC grants to all eligible individuals consistent with the various conditions set forth by Congress. See, e.g., *King v. Smith*, 392 U.S. 309 (1968); *Lewis v. Martin*, 397 U.S. 552 (1970); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Townsend v. Swank*, 404 U.S. 282 (1971); *Remillard v. Carleson*, 406 U.S. 598 (1972). This case arises out of the failure of Petitioners (hereinafter also referred to as Welfare Department or State) to abide by the clear command of one of those conditions; to wit, §402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7).

The case involves working individuals who, because of the inadequacy of their earnings, are in need of supplemental public assistance benefits under the AFDC program. Section 402(a)(7) requires each state, in determining financial eligibility for and the amount of an AFDC grant, to take into consideration any income and resources of such individuals "as well as any expenses reasonably attributable to the earning of such income." 42 U.S.C. §602(a)(7).[2] In general, if the net available

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[1] Colorado received $23,580,000 from the federal government for its AFDC public assistance program in the fiscal year ending June 30, 1970. NCSS Report F-2 (FY 1970), "Sources of Funds Expended for Public Assistance Payments and for the Cost of Administration, Services and Training," Table 7, Published by The Department of Health, Education and Welfare.

[2] This quoted language is contained in and is applicable to *all* categorical assistance programs under the Social Security Act: Old Age Assistance (OAA), §2(a)(10), 42 U.S.C. §302(a)(10); AFDC §402(a)(7), 42 U.S.C. §602(a)(7); Aid to the Blind (AB), §1002(a)(8), 42 U.S.C. §1202(a)(8); Aid to the Permanently and Totally Disabled (APTD), §1402(a)(8), 42 U.S.C. §1352(a)(8); Aid to the Aged, Blind and Disabled (AABD), §1602(a)(14), 42 U.S.C. §1382(a)(14). Effective January 1, 1974, except in the cases of the Virgin Island, Puerto Rico and Guam, these "adult" public assistance programs have been replaced by a federally

income so derived is less than the state's standard of need, the individual is entitled to an assistance grant which acts as a supplement to his or her earnings.[3] Working applicants for and recipients of AFDC are being denied full benefit of this supplement because the State of Colorado fails to fully take into consideration, as is its obligation, those reasonable expenses attributable to the earning of income other than mandatory payroll deductions and child care expenses which are in excess of a flat $30 work expense allowance. Colorado Division of Public Welfare Manual. §4313.13.

It is important to note that this case does *not* involve a claim for work expenses that are *un*reasonable either in amount or by virtue of a tenuous relationship to employment. *Cf: County of Alameda v. California W.R.O.*, 97 Cal. Rptr. 384, 5 Cal.3d 730, 488 P.2d 953 (1971), *appeal dismissed*, 405 U.S. 913 (1972). Thus, Petitioners are not prevented from inquiring into whether a particular work expense is excessive in amount or not really attributable to the earning of income. Indeed, Respondents acknowledge Petitioners' responsibility to inquire into and consider only reasonable expenses, including, if applicable, less expensive alternative means of transportation. Petitioners, however, by operation of

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administered Supplemental Security Income Program under a new Title XVI of the Social Security Act. Pub. L. 92-603, §301. With regard to blind persons in that new program, however, Congress has reenacted the mandatory work expense provision in identical language. See §1612(b)(4)(a)(ii) of the Social Security Act, as amended by Pub. L. 92-603, §301.

[3] New applicants are similarly kept off the AFDC rolls because of assumed net income in excess of the standard of need. A detailed explanation of the actual computations in which the work expense disregard is applicable is contained in Appendix A.

their $30 flat allowance, automatically fail to recognize those work expenses in excess of $30 that *are* reasonable both in amount and attribution to employment, amounts and items of expenses which Petitioners themselves, prior to implementatoin of the challenged rule, Colorado Division of Public Welfare Manual, §4313.13, determined to be reasonable. Indeed, Petitioners acknowledge that there are working AFDC applicants and recipients in Colorado whose reasonable work-related expenses in excess of $30 per month would be recognized at this time but for the operation of the rule in question.

Such is the situation of Respondent, Mrs. Ascension Vialpando. Prior to July 1, 1970, Mrs. Vialpando was employed and receiving a supplemental AFDC grant of $74 per month for herself and her daughter, Sabrina. Her grant was computed on the basis of reasonable monthly work expenses of $126.11, an amount determined by Petitioners themselves to be reasonably attributable to the earning of income after inquiring into Mrs. Vialpando's situation. Work expenses included a monthly car payment for a used Volkswagen. This expense was allowed because of the lack of public transportation between Respondent's residence and her place of employment. Mrs. Vialpando resides in the small rural community of Fountain, Colorado, which is approximately eight (8) miles South of Fort Carson where she was employed as a kitchen helper.

Effective July 1, 1970, when Petitioners promulgated the rule at issue,[4] only $30 of the $126.11 previously

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[4]It is not, perhaps, entirely coincidental that $30 is the same amount that formerly served as a maximum for the travel expenses of working recipients. See Petition for Certiorari, pp. 6-7. Thus the amount now used to limit *all* expenses, except child care and

determined by Petitioners to be reasonable, could be deducted from Mrs. Vialpando's earned income in determining the amount of net income actually and currently available to meet her family's needs. Thus, an additional $96.11 ($126.11 less $30), though not actually available to her, was nonetheless assumed by Petitioners to be available to meet her basic family needs as determined by the state. Since, as a result, Mrs. Vialpando's assumed net earned income exceeded the state's "standard of need", cash benefits and eligibility for medical assistance under Colorado's "medicaid program" under Title XIX of the Social Security Act, 42 U.S.C. §1396a(a)(10), were terminated. See *Fullington v. Shea*, 320 F. Supp. 500 (D. Colo. 1970), aff'd per curiam, 404 U.S. 963 (1971).

Consequently, Respondent brought an action in the United States District Court for the District of Colorado seeking declaratory and injunctive relief, claiming violation of both §402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7), and the Equal Protection Clause of the Fourteenth Amendment to the United States Con-

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payroll deductions, formerly limited but *one* expense, transportation.

The Colorado $30 allowance is approximately seven dollars per month below actual 1969-70 averages. (Single Appendix, pp. 40, 41, 41A-41U). Moreover, apart from being clearly below actual work expenses incurred on the average by working recipients, the $30 flat amount has not been updated since its implementation in July of 1970. In sum, the standard was not derived by a statistically fair method. Thus it cannot be accepted as accurate, even were it to be used with the proviso that an individual recipient could have expenses in excess of that amount exempted upon demonstration of entitlement.

stitution.[5] The parties submitted the statutory issue to a single judge court on cross motions for summary judgment having stipulated to the significant facts.

The matter was argued before the trial court on December 17, 1971 and an Opinion and Order was entered on January 13, 1972 (Single Appendix, p. 42); the court found that §4313.13 of the Colorado Division of Public Welfare Manual contravened §402(a)(7) of the Social Security Act and was therefore void under the Supremacy Clause. Judgment was entered on February 18, 1972 (Single Appendix, p. 50). Subsequent to the decision, Petitioners moved for a new trial on the basis of "newly discovered evidence" in the form of a Department of Health, Education and Welfare (HEW) *amicus* brief filed in another lawsuit. On March 9, 1972, the court denied Petitioners' motion and issued another memorandum opinion re-affirming its original decision. (Single Appendix, p. 78).

On March 22, 1973, the Court of Appeals for the Tenth Circuit affirmed the decision of the trial court. The court interpreted the words "any expenses" to mean "all actual expenses" and found that 42 U.S.C. §602(a)(7) required states to consider all actual expenses reasonably attributable to the earning of income in determining need. The court found the problem with the Colorado

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[5] In August, 1970, prior to the summary judgment hearing, Mrs. Vialpando terminated employment and again received a full AFDC grant. On September 1, 1971, however, she returned to work, again incurring reasonable work related expenses in excess of the $30 allowance. Thus, although Mrs. Vialpando was still eligible for a supplemental AFDC grant, her supplemental grant was significantly lower than the amount she would have been entitled to had all her reasonable work related expenses been deducted from her income as required by §402(a)(7).

system not to be its use of a standardized allowance but its intransigent adherence to this standard when a particular family's expenses of employment exceeded the allowance. The Welfare Department thereafter petitioned for certiorari and the writ was granted by this Court on November 5, 1973.

SUMMARY OF ARGUMENT

Pursuant to 42 U.S.C. §602(a)(7), Congress has mandated that states to take into consideration reasonable work expenses when determining the public assistance grants of working ADC recipients. Colorado, with the approval of HEW, has established a flat amount of $30 per month for all work expenses in excess of mandatory payroll deductions. Colorado Welfare Manual §4313.13. Respondent has reasonable work expenses greater than the $30 and submits that Colorado's $30 flat amount is in violation of the Federal Act, its legislative history, the federal regulations and cases.

The text of the statute supports Respondents. First, 42 U.S.C. §602(a)(7) requires the consideration of "any" reasonable work expenses in the determination of need; not some, not an average, but *any*. Second, the words of the statute "take into consideration" not only modify "any expenses reasonably attributable to the earning of any such income", but also modify "any other income and resources." States must consider all sources of income and all reasonable work related expenses for recipients on a case by case basis. Averaging is neither permissible for income nor expenses.

Respondent's position is reinforced by the legislative history of 42 U.S.C. §602(a)(7), added to the Social Security Act in 1962. Congress mandated states to take work expenses *fully* into account. S. Rep. No. 1589, 87th

Cong., 2nd Sess. U.S. Code Cong. & Ad. News 1943, 1959-1960.

The State and the Solicitor General argue States may take work expenses into consideration on the basis of statistical averages. The major underpinning of this averaging theory is this Court's decision in *Rosado v. Wyman*, 397 U.S. 397 (1970). Respondents respectfully submit this case can be distinguished; *Rosado* was concerned with 42 U.S.C. 602(a)(23), not 602(a)(7); *Rosado* permits states to use averaging to determine state standards of need, an area where states have traditionally had discretion, because the Social Security Act does not mandate specifically how standards of need are to be determined. However, language on work expenses is specific.

The actual controversy in this case is focused when it becomes clear that Respondent's position is even supported by federal regulations and that actually the Secretary of HEW has taken an *ad hoc* position to permit averaging of work expenses. *The Handbook of Public Assistance Administration*, Pt. IV, §3140, promulgated contemporaneously with the enactment of 42 U.S.C. §602(a)(7) permitted the establishment of a standard amount for certain items but required itemization when actual expenses exceeded the standard in the individual case. The *Handbook* is still interpretative material. Further, codification of *Handbook* rules support the disregard of all work-related expenses. The regulations start with the fundamental proposition that "only such income as is actually available for current use on a regular basis will be considered. . . ." 45 C.F.R. §233.20(a)(3)(ii)(b). This principle is then applied to work expenses: "income *equal* to expenses reasonably attributable to the earning of income" is not to be regarded as available income. 45 C.F.R.

§233.20(a)(3)(iv)(a) (emphasis added). These regulations do not permit averaging and correctly interpret the specific language of 42 U.S.C. §602(a)(7).

The *ad hoc* interpretation of the statute made only in response to lawsuits, and not in published form, is entitled to little weight given the prior administrative interpretation and Congress' failure to disturb that construction over the past twelve years. *U.S. v. Leslie Salt Co.*, 350 U.S. 383 (1956).

ARGUMENT

I.

THE WELFARE DEPARTMENT OF THE STATE OF COLORADO MUST DEDUCT ANY AND ALL REASONABLE WORK-RELATED EXPENSES IN DETERMINING THE AMOUNT OF NET INCOME ACTUALLY AND CURRENTLY AVAILABLE TO AFDC RECIPIENTS.

The clear meaning of §402(a)(7), its legislative history and the regulations promulgated thereunder all require the Welfare Department of the State of Colorado to fully deduct all reasonable work expenses in determining the need for the amount of assistance of working AFDC applicants and recipients.

A. The Clear Meaning of the Statutory Language of §402(a)(7) Requires the Full Disregard of Any and All Expenses Reasonably Attributable to the Earning of Income.

The judicial construction of a statute properly begins "by looking to the text itself." *United States v. Bass*, 404 U.S. 336, 339 (1971). Section 402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7), provides as follows:

> (a) A State plan for aid and services to needy families must . . . (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any individual (being in the same home of such child or relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.

Respondent contends that the text of §402(a)(7) supports her interpretation of the section, and that the State's interpretation renders that section internally inconsistent.

Section 402(a)(7) requires the consideration of "any" reasonable work expenses in the determination of need; not some, not an average, but any. Ignoring this obvious impediment to its position, and focusing solely on the phrase "take into consideration," the State contends that the mandate of the statute may be satisfied by use of a flat amount since had Congress desired the consideration of *all* work expenses, it "could have said 'deduct all work expenses from gross income' or some other specific requirement." (Petitioners' Brief, p. 14). (See also Solicitor General's Brief, p. 6). The State's argument misses the mark, however, since the requirement that "any" expenses be disregarded is evidence, not of a lack of specificity, but of a clear intent to set *no* limitation apart from reasonableness.

If Congress intended a *different* approach to be taken words were readily available to achieve that purpose. What Petitioners seek to read into §402(a)(7) is "not so complicated nor is English speech so poor that words

were not easily available to express the idea or at least to suggest it." *Addison v. Holly Hill*, 322 U.S. 607, 618 (1944). Indeed, at the same time Congress added the work expense provision to §402(a)(7) it added the following provision to that section as well:

> "except that, in making such determination (of need), the State agency *may*, subject to limitations prescribed by the Secretary, *permit all or any portion* of the earned or other income to be set aside for future identifiable needs of a dependent child." Pub. L. 87-543, §106(b) (Emphasis added).[6]

Congress thus surely knew both how to give the states flexibility, and how to authorize a disregard of something less than 100%.[7]

More importantly, when read as a whole, the language of §402(a)(7) requires full consideration of *all* actual work expenses reasonably incurred in order to be internally consistent.[8] The words "take into consideration" not only modify "any expenses reasonably attributable to the earning of any such income," but they also modify "any other income and resources." The Tenth Circuit Court of Appeals recognized this construction when it stated:

> "The phrase 'take into consideration' is flexible and by itself does not require a particular treatment of

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[6] This provision is presently included in §402(a)(8)(B)(i) of the Act, 42 U.S.C. §602(a)(8)(B)(i). Pub. L. 90-248.

[7] "May" is used instead of "shall," and "all or any portion" is used instead of "any."

[8] The State repeatedly asks this Court to consider the Act as a whole (see p. 14 of petitioner's Biref). Respondents of course agree, but point out that the State has failed to consider even §402(a)(7) in its entirety.

> employment expenses. However, when considered in the statutory framework of 42 U.S.C. §602(a)(7), these words assume a particular meaning. It should be noted that the phrase 'take into consideration' modifies both 'income' and 'expenses'. Consequently, Congress intended employment expenses to be treated in the same manner as income." *Vialpando, supra,* at p. 734 (Single Appendix pp. 90-91).

It cannot be seriously contended that a state could satisfy the mandate to "take into consideration any other income and resources" by averaging the income or resources of all AFDC recipients and applying the average so derived to *each* AFDC budget.

The very purpose of the addition of §402(a)(7) to the Act in 1939, Pub. L. 71-379, §401(b), was to clarify that AFDC was to be provided *only* to "needy" families, and that the amount of assistance actually paid was to be based on the amount determined to be needed in the individual case after other income and resources were considered. See, for example, 45 C.F.R. §233.20(a)(3)(viii). Colorado's position with regard to the consideration of work expenses, if applied to the consideration of income, would permit it, for example, to "average" monthly child support payments and subtract this average from all appropriate budgets regardless of whether or not that amount was actually forthcoming in an individual case, or "average" the earned income of all recipients and budget the "average" in all appropriate cases. Such an interpretation would be antithetical to a "needs" related residual assistance program which assures that only such income as is actually available for current use on a regular basis will be considered in establishing need for and the amount of AFDC. 45 C.F.R. §233.20(a)(3)(ii)(c). See also *King v. Smith*, 392 U.S. 309 (1968); *Lewis v. Martin*, 397 U.S. 552 (1970).

The derivation of the present §402(a)(7) makes absolutely clear that the Respondent's textual interpretation of the section is the correct one. In 1939, the section read, in its entirety, as follows:

> "provide that the State agency shall, in determining need, *take into consideration any other income and resources* of any child claiming aid to dependent children." Pub. L. 76-379, §401(b) (Emphasis added).

There were no changes in §402(a)(7) until 1962 when it was amended to read as follows:

> "provide that the State agency shall, in determining need, *take into consideration any other income and resources of any child or relative* claiming aid to families with dependent children, *as well as any expenses reasonably attributable to the earning of any such income*. . . ." Pub. L. 87-543, §106(b) (Emphasis added).

Thus, Congress mandated that the states "take into consideration" (1) any income or resources and (2) any expenses reasonably attributed to the earning of any such income. Surely if Congress intended income and resources to be objectively determined on a case by case basis it would not have simply added the phrase "as well as any expenses" had it not similarly intended their determination to be on a case by case basis.

The Solicitor General agrees, as of course he must, that Congress intended income to be considered in the needs determination process on a case by case basis, see Solicitor General's Brief, p. 6, but argues that a different interpretation should be given to the phrase "take into consideration" when used with its object "expenses" than when used *in the same sentence* with its object "income", *ibid.* According to the Solicitor, "a single

word or phrase often takes on different meanings for each of its objects within the same sentence," as in the case of a hunter and a canoeist who "shoots both squirrels and rapids." *Ibid.* Acceptance of the Solicitor's proffered construction of §402(a)(7) would require the Court to impute to Congress the intention to legislate by resorting to a grammatical construction that has been characterized as probably the most common of puns, that is, the use of the same word with deliberately different meanings. See T. Kane and L. Peters, A Practical Rhetoric of Expository Prose, Oxford University Press (1966), p. 509. Mark Twain might well have used language in such a fashion; Congress seeking to mandate particular conduct in the public assistance programs, and expecting to be understood in the process, surely did not.[9]

Petitioner's view that limitations on work expenses are consistent with §402(a)(7) has been rejected by those courts that have interpreted the section, whether such courts were considering limitations upon the *types* of work expenses covered, e.g. *Connecticut State Department of Welfare v. HEW*, 448 F.2d 209, 216-217 (2d Cir. 1971); maximums on work expense deductions, e.g. *Williford v. Laupheimer*, 311 F. Supp. 720 (W.D. Pa. 1969) or flat standard allowances such as used by Colorado.

Thus, the Court of Appeals for the Second Circuit held that "all expenses reasonably attributable to the earning

[9] Kane and Peters (p. 509) quote the following pun from Mark Twain's writings:

> "Even as a schoolboy, poultry-raising was a study with me, and I may say without egotism that as early as the age of seventeen I was acquainted with all the best and speediest methods of raising chickens, from raising them off a roost by burning lucifer matches under their noses, down to lifting them off a fence on a frosty night by insinuating a warm board under their feet."

of income . . ." must be excluded from the computation of available income in determining eligibility and need. *Connecticut State Welfare Department v. HEW, supra* at 216 (emphasis added). The Court there approved *Williford v. Laupheimer, supra,* in which a three-judge court ruled that §402(a)(7) prohibited the imposition of a maximum for work-related expenses:

> "We think it obvious that the fifty dollar limitation on income deductions is inconsistent with the express provision of the Social Security Act. The imposition of such a maximum deduction violates the clear Congressional directive that the states shall allow deductions for 'any expenses attributable to the earning of such income.' The Commonwealth makes no claim that this limitation is inspired by any considerations other than attempt to preserve and protect its coffers. And although we may sympathize with the state's attempt to alleviate the unquestionably and increasingly heavy burden of programs such as AFDC, the solution of such problems resides in Congress. To date, it has not seen fit to impose any limitation on work-related income deductions; the states are not free to do otherwise." *Williford v. Laupheimer, supra,* at 722.

More recent cases, including the decision in the lower court, that have dealt with the limitation imposed by a flat allowance for work expenses, have been decided similarly. *Amos v. Englemen*, 335 F. Supp. 1199 (D.N.J. 1970);[10] *Conover v. Hall*, Civil Action No. 215815

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[10]The first case to deal with the issue of a flat allowance for work expenses was *Amos v. Engleman*, 335 F. Supp. 1199 (D.N.J. 1970). The court in *Amos* considered, among other issues New Jersey's $50 standard allowance for all expenses of employment other than the costs of child care and mandatory payroll deductions. The court held that such a standard deduction for work expenses was proper, there being nothing in the record to

(Sacramento County, Calif. Superior Court, October 8, 1971;[11] *Adams v. Parham*, ____ F. Supp. ____ (N.D. Ga., Civil Action No. 16041) (April 14, 1972);[12] *Campagnuolo v. White*, ____ F. Supp. ____ (D. Conn. No. 13,961) (June 22, 1972);[13] *Anderson v. Graham*, ____ F.2d ____ (8th Cir. December 20, 1973).[14] There is no

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establish that $50 was an unreasonable amount or that plaintiffs in the action incurred expenses in excess of it. In modifying language, however, the court found that it was not inconsistent with §402(a)(7) for the state to use a standard deduction provided the allowance is adequate to cover *all* actual expenses. The court's holding vis-a-vis work expenses was not an issue in a subsequent appeal and was therefore not part of this Court's decision to affirm, 404 U.S. 23 (1971).

As distinct from *Amos*, the plaintiff in the instant case (as in the other cases subsequent to *Amos* in which the flat work expense allowance was at issue) had actually incurred expenses in excess of the flat allowance amount, thereby squarely raising the issue before this Court.

[11] A copy of the decision in *Conover* is contained in Appendix B. *Conover* was reversed by the intermediate court in California, 104 Cal. Rptr. 77, 28 Cal. App.3d 676 (1972), but that decision has been rendered null and void by the granting of a hearing by the California Supreme Court on January 17, 1973, and, as a result, the preliminary injunction of the trial court restraining the operation of the state's flat work expense allowance is currently in effect. Upon the granting of a hearing by California's highest court, the opinion and order of the state's court of appeals "became a nullity and of no force or effect, either as a judgment or as an authoritative statement of any principle of law discussed therein." *Knouse v. Nimocks*, 8 Cal.2d 482, 483, 66 P.2d 438 (1937). "The decision of the state Court of Appeals is no more effective as a judgment than if it had not been rendered." *In re Kent's Estate*, 6 Cal.2d 154, 156, 57 P.2d 901, 902 (1936). See also *Miro v. Superior Court*, 5 Cal. App.3d 97, 84 Cal. Rptr. 874 (1970).

[12] A copy of the decision in *Adams* is contained in Appendix C.

[13] A copy of the decision in *Campagnuolo* is contained in Appendix D.

[14] A copy of the decision in *Anderson* is contained in Appendix E.

question that a flat allowance is as much a limitation upon the disregard of work expenses as is a maximum allowance or a limitation upon types of expenses allowed.[15] Thus, §4313.13 of the Colorado State Manual is violative of the clear language and meaning of §402(a)(7). Compare *Williford v. Laupheimer, supra,* and *Campagnuolo v. White, supra.*

The plain meaning of the work expense clause of §402(a)(7), as argued by Petitioners here and construed by the several courts cited above, is fully supported by the legislative history of the provision, and the purpose which Congress sought to achieve by its adoption.

B. The Legislative History of §402(a)(7) Reveals That All Reasonable Work Expenses Are To Be Fully Deducted in Determining the Amount of Net Income Actually and Currently Available to AFDC Applicants and Recipients.

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[15]It should be emphasized that Colorado's use of a standard work expense allowance is in no way justified or related to its undisputed power to set the level of benefits in the AFDC program. If Respondents prevail, and if costs in the AFDC program increase as a result (which we do not concede), Colorado may recoup such increases by adjusting the percentage of need which it has agreed to pay all recipients (currently at 100%). See *Rosado v. Wyman, supra; Jefferson v. Hackney, infra.* Such a reduction would not be directed only at working recipients and would be consistent with the state's power to determine total AFDC funding. See *King v. Smith, supra,* 42 U.S.C. §601. Colorado may not, however, curb its total AFDC expenditures by contravening a specific congressional command and thereby thwart the purpose Congress sought to achieve thereby. See *Connecticut State Dept. of Welfare v. HEW, supra; Arizona Dept. of Public Welfare v. HEW,* 449 F.2d 456 (9th Cir. 1971), *cert. denied,* 405 U.S. 919 (1972) [limitation on work expense disregard not justified by power to set level of benefits]; Cf. *Townsend v. Swank, supra; Carleson v. Remillard, supra; King v. Smith, supra.*

Although the states have been required to consider all income and resources since the early days of the AFDC program, the work expense disregard was optional with the states until 1962. As early as 1942, however, state welfare agencies were encouraged but not required by the Social Security Board to recognize the special financial circumstances of employed assistance recipients. Social Security Board, Bureau of Public Assistance, State Letter No. 4 (April 30, 1942), p. 1. The option continued and was made clear again in HEW State Letter No. 291 (March 11, 1957).

Against this background, recommendations were made and action ultimately taken to make the work expense disregard mandatory. Thus, in 1962, President Kennedy proposed changes in the federal public assistance program which stressed "services instead of support, rehabilitation instead of relief, and training for useful work instead of dependency." Hearings on H.R. 120032 before the House Committee on Ways and Means, 87th Cong., 2nd Sess. (February, 1962), p. 2. In a letter to John W. McCormack, Speaker of the House of Representatives, HEW Secretary Ribicoff described the proposed Public Welfare Amendments of 1962 as they related to the issue of work expenses:

> "To encourage assistance recipients to participate in the community work and training programs or take regular employment, full consideration of the additional expenses of employment would be required." *Id.* at p. 2.

The proposed amendment regarding the work expense disregard was summarized as follows in the Secretary's report:

> "Under current Federal policy, while States are required to consider any income and resources (with

certain exclusions in the case of Title X of the Social Security Act) in determining need, they are encouraged but not required to take into consideration expenses incurred in earning income. All public assistance titles of the act would be changed by the bill to require the consideration of necessary expenses that may reasonably be attributed to earning income. These changes would not become effective until July 1, 1963." *Id.* at p. 28.

Later, in hearings before the Senate Finance Committee, Secretary Ribicoff explained the practical effect of the requirement to Senator Curtis of Nebraska:

"Senator Curtis: . . . Now, on page 14 the bill before us requires that a State agency in determining need must take into account any expenses that may be reasonably attributable to the earning of income. The requirement is new; is it not?

Secretary Ribicoff: That is correct.

Senator Curtis: Explain how that would work.

Secretary Ribicoff: Well, basically, let us say that for a woman or a man to get a job he would have to take a train or a bus, and the transportation expenses might be $1 a day. He would have to be given credit for $1 a day, or, let us say, he had a job where he had to get special goggles or special safety shoes, items of clothing or let's say he had a job where he was required to buy uniforms. He might have a job in a gas station or a hotel, where the uniforms had to be bought.

Senator Curtis: A State can take those things into account now?

Secretary Ribicoff: They can. But not all of them do. What we are trying to do, Senator Curtis, is do everything we can to encourage people to get a job and work and we feel it is important to encourage

the States. By having this provision, the State will take into account these expenses so people will get jobs. I believe that *the State should give them an allowance for those items that are necessary for them to get the job.*" Hearings before the Committee on Finance, United States Senate, 87th Cong., 2nd Sess. (May 1962), p. 152 (Emphasis added).

In reporting out the Public Welfare Amendments of 1962, which were enacted into law, the Senate Report on the bill, S. Rep. No. 1589, 87th Cong., 2nd Sess., U.S. Code Cong. & Ad. News 1943, 1959-1960, explained the purpose of the new mandatory work expense disregard:

"Under the present law, all income of recipients of public assistance is taken into account (with a limited exception under Title X) in determining need. States are permitted, but not required, to take into consideration the expenses an individual has in earning any income (this practice is not uniform in the country and in a substantial number of States full consideration of such expenses is not given). The committee believes that it is only reasonable for the States to take these expenses *fully* into account. Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore, added a provision in all assistance titled requiring the States to give consideration to *any* expense reasonably attributable to the earning of income." (Emphasis added).[16]

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[16]The House Report, H. Rep. No. 1414, 87th Cong., 2d Sess., 23 (1962), contains, in essence, the same language.

As the legislative history to §402(a)(7) clearly reveals, the intent of Congress was to assure that working recipients would not suffer by their participation in employment. Thus, prior to 1962, in those states which did not disregard all expenses attributable to employment, a recipient frequently would be in a better position financially were he or she not working because of the expenses of employment. The 1962 amendments thus removed the disincentive to work by requiring the full disregard of reasonable work related expenses. Colorado's limitation on the disregard of work expenses, in the form of a $30 flat allowance, negates this legislative purpose and reinstates the disincentive removed by §402(a)(7).[17]

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[17]In 1967, further amendments to the Social Security Act provided a positive work incentive in §402(a)(8)(A)(ii) by allowing the AFDC recipient to disregard, not only work expenses, but a portion of his or her gross earned income as well. 42 U.S.C. §602(a)(8)(A)(ii). The work expense disregard, though working in conjunction with the earned income exemption, is nonetheless a separate and distinct legislative entity. In fact, the addition of the earned income exemption in §402(a)(8)(A)(ii), while necessitating an amendment of §402(a)(7) to assure conforming language, in no way diminished the requirement that any expenses reasonably attributable to the earning of income be taken into consideration. Indeed, the fact that Congress was cognizant of the work expense disregard when mandating in addition thereto the earned income exemption is proof of the independent vitality and importance of the work expense disregard. This is in contrast to the trial court's speculation that §402(a)(7) might be an anachronism in view of the later enactment of the earned income exemption provisions of §402(a)(8)(A)(ii). (See Single Appendix pp. 79-80). Further, it is important to note that §402(a)(7) was not the only disregard provision of general application prior to passage of §402(a)(8). While it may be true that it was the only existing disregard provision applicable to the AFDC program, it is important to understand that a mandatory earned income incentive for the AB program had been in existence since 1950. Indeed, that provision stood alone and was not accompanied by a work expense disregard

There have been several proposals over the years to amend the Social Security Act to provide a flat amount to be deducted from income to compensate for work related expenses regardless of actual reasonable expenses in the individual case, but none have been enacted to date, and §402(a)(7) stands as it was amended in 1962. For example, in the Administration's proposed Family Assistance Act of 1970, H.R. 16311, 91st Cong., 2d Sess., which was passed by the House of Representatives, the new Federally administered program would have abolished the work expense provision as a separate item and merged it with the positive work incentive exemption. The new provision would have disregarded from the earned income of all recipients $60 per month plus a fraction of the remainder instead of the present $30 per month plus a fraction of the remainder and all reasonable work expenses. See H.R. 16311, §101, proposing to add a new §443(b)(4) to the Social Security Act. Similarly, in passing the Administration's proposal again in 1971, the House provided a flat $30 amount to be added to the positive work incentive to replace the present work expense provision. H.R.1, 92d Congress, 1st Sess., §401, proposing to add a new §2153(b)(4) to the Social

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until 1962 when the work expense disregard became mandatory in AB and all other categorical assistance programs under the Social Security Act. In fact, the work expense disregard provision in each of the categorical assistance titles used exactly the same language. Subsequently, earned income exemptions, in addition to the work expense disregard, were enacted in AFDC, OAA, APTD, and AABD. In sum, the two provisions, i.e., the work expense disregard and the earned income incentive, were always treated separately, whether the work expense disregard was incorporated into the program before, e.g., APTD, OAA, AFDC, or subsequent, e.g., AB, to the earned income exemption.

Security Act. In explaining this provision the Committee on Ways and Means observed that it "would eliminate the open-ended work expense exclusion and, in its place, would increase the flat earnings exclusion." H. Rept. 92-231, Report on H.R.1, 92d Cong., 1st Sess. (1971), p. 177.

Of course, the Family Assistance Plans were never adopted, but Congress again has been asked by the Administration to replace the "open-ended" work expense provision of §402(a)(7) with a flat $30 amount in the context of the present AFDC program. See S.2311, 93d Cong., 1st Sess., and H.R. 3153, §162, 93d Cong., 1st Sess. (passed by the Senate on November 30, 1973). What Colorado seeks to do under the present AFDC program, and what the Solicitor General seeks to justify, is the revision of an Act of Congress without waiting for the Congress to place its imprimatur on the policy they favor. It is up to Congress to amend §402(a)(7), not Colorado, not HEW, and not this Court.

C. Neither *Rosado v. Wyman* Nor Mere Claims of Administrative Efficiency Justify an Averaging of Work Expenses Under §402(a)(7).

The Solicitor General states that it is the judgment of the Secretary that work expenses may be taken into consideration by the States in the same manner as other living expenses, i.e., "on the basis of statistical averages". *Rosado v. Wyman*, 397 U.S. 397, 419. This decision is the major underpinning of the Secretary's averaging theory. HEW's position, succinctly, is that since the Supreme Court authorized state AFDC programs to consolidate items of need in the state's standard of need by statistically averaging those items, states may similarly "average" work-related expenses and apply the resulting amount to all cases regardless of actual amount.

Respondents will demonstrate that the agency's and, in turn, the Petitioners' reliance on *Rosado* is misplaced.

The question before this Court in *Rosado* was resolved only after a review of the specific requirements embodied in §402(a)(23) [*not* §402(a)(7)], the legislative history of that section, and the general framework of prior legislation in the area of need standards. Upon analysis it is clear that the decision was not intended as a blanket approval for some philosophical principle of "averaging" without regard to *what* is being averaged, *why* it is being averaged, or the *effect* its being averaged will have on implementation of specific congressional objectives.

A standard of need consists of a dollar amount which represents the total cost of those items which a state has determined to be necessary to maintain a subsistence level of living; it may be expressed as a single flat amount available for all families, or it may contain, in addition, certain special need items which are included in a family's budget only when need for the particular item is demonstrated in a given month. See *Rosado v. Wyman, supra*; 45 C.F.R. §233.20(a)(1), (2). By its very nature, a standard of need is merely an estimate by the state welfare officials as to the minimum financial requirements of the state's poor. There is no provision of the Social Security Act, however, which explicitly sets forth the requirement that a standard of need be established or which specifies how such a standard be constructed. Such a standard was required by the federal government based on a reading of the Act's requirements that need for assistance be determined by considering all income and resources, 42 U.S.C. §602(a)(7), and that AFDC be furnished only to "needy" families, 42 U.S.C. §§601, 606. Obviously some standard was necessary against which such income and resources could be compared.

Given the lack of explicit statutory requirements for a standard of need, and the congressional determination to require states to provide assistance only "as far as practicable under the conditions in [each] State," 42 U.S.C. §601, *Dandridge v. Williams*, 397 U.S. 471, 478 (1970), HEW and its predecessor agencies have, since 1936, permitted the states almost unfettered discretion in determining the items to be included in the standard, and in establishing the prices of the items which were so included. See *King v. Smith*, 392 U.S. 309, 318, footnote 14; HEW *Handbook*, Pt. IV §3120. See also *Lampton v. Bonin*, 299 F. Supp. 336, 349 (1969) (Cassibry, dissenting).[18] In contrast to the requirement that *any* work-related expenses be considered, there is nothing in the Social Security Act which demands that all needs be satisfied by the AFDC program.[19]

Thus, prior to 1967 there was little or no control on state need standards.[20] Section 402(a)(23), signed on

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[18]HEW has, however, required the states to determine need on an "objective and equitable basis." 45 C.F.R. §233.20(a)(1).

[19]As originally introduced, the Act required that the state provide AFDC in sufficient amounts that, when combined with other income, a "reasonable subsistence" compatible with "health and decency" could be obtained. H.R. 4120, 74th Cong. 1st Sess. §204 (1935). This provision was eliminated from the bill reported out by the House in deference to state's rights advocates and the "as far as practicable" language was inserted in its place. Witte, *Development of the Social Security Act* (1962); DeForest, Rubin, Wynia, *Legislative History of the AFDC Program* (BSSR, 1970), p. 48.

[20]This explains why provision for work-related expenses as a *special need item* in the standard of need, was merely "encouraged" by HEW prior to 1962, and was not adopted by all the states, nor fully adopted by many of the states which provided for *some* expenses. It was Congress' decision in 1962 to treat work expenses very differently than other items of need, i.e. to mandate their consideration, despite the fact that they were "simply additional items of living expense." See Solicitor General's Brief, p. 7.

January 2, 1968, provided that each state AFDC plan must

> "provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

This Court has found only two purposes to this statute:

> "First, to require States to face up realistically to the magnitude of the public assistance requirements and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis." *Rosado v. Wyman*, 397 U.S. at 412-14; *Jefferson v. Hackney*, 406 U.S. 535, 542 (1972).

The first purpose is the one relevant to the averaging question. This Court held that New York could not completely eliminate special need items from its standard, since that would "circumnavigate around the requirement of re-evaluating its existing standard," 397 U.S. at 415, but that New York could "redefine its method for determining need" by a "fair averaging" of those special need items. 397 U.S. at 419. The latter would be consistent with §402(a)(23) because the consolidated standard would, after the necessary cost-of-living adjustment, satisfy the statute's purpose to adjust grant levels to reflect current prices. A statistical averaging of special need items would not thwart the congressional scheme to require the states to raise the

average payments or suffer the "political consequences" of a percentage reduction. 397 U.S. at 413.[21]

The key to *Rosado* is that §402(a)(23)'s very limited purposes could be satisfied without taking away from the states the broad power they had to define and construct a standard of need prior to its enactment. The Court explained its interpretation of §402(a)(23) as follows: "[a]n extensive alteration in the basic underlying structure of an established program is not to be inferred from ambiguous language that is not clarified by legislative history." *Rosado*, 397 U.S. at 414, footnote 17. Section 402(a)(7) and its purposes, on the other hand, stand in sharp contrast to §402(a)(23). While it is true that prior to 1962 the states had flexibility to include or not include work expenses in the standard of need (consistent with its general flexibility in that area), the amendment that year to §402(a)(7) specifically and purposefully ended that latitude.

First, as noted earlier, the 1962 amendment to §402(a)(7) required work expenses to be offset against *income*. See 45 C.F.R. §233.20(a)(7)(ii). In the consideration of income, however, states have *never* enjoyed the flexibility that they had in the establishment of need standards. Unlike the determination of a subsistence standard of need, the evaluation of income is an objective determination and, as noted earlier, Congress intended

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[21] While some families are hurt, and others benefited by a fair averaging, 397 U.S. at 419, the statutory purpose of §402(a)(23) is fully satisfied. The consolidated standard must be adjusted to account for cost-of-living increases, and that adjustment will "lay bare" the extent to which the "average" standard of need fails to meet current economic realities, and will force the state to choose between a percentage reduction or the maintenance of greater AFDC budgets.

that it be done for all applicants and recipients on a case by case basis. The Tenth Circuit recognized this basic distinction between averaging for purposes of setting a standard of need and disregarding work expenses, when it stated:

> "Additionally, an understanding of the manner in which a state's standard of need and the computation of a particular family's available income and resources under 42 U.S.C. §602(a)(7) compliment each other illustrates the incongruity of Colorado's standardized employment expenses allowance in the instant case. The standard of need is a dollar amount representing the costs of those items which a state has determined to be necessary to maintain a hypothetical family at a subsistence level. Such an estimate by its nature is susceptible to computation through the use of statistical averages and it was thus fitting for the Supreme Court to approve the use of an averaging system in *Rosado. Vialpando v. Shea*, 475 F.2d 731, 734 (Single Appendix, p. 92).

Moreover, the "averaging" of work-related expenses runs directly *counter* to the purpose of the 1962 amendments as well as to its plain meaning. As noted in *Rosado*, some families are benefited, other families are harmed, by an "average," but, as demonstrated above, the purpose of §402(a)(7) is to provide all individuals with an incentive to work, and to guarantee to *all* recipients that they would not be penalized if they chose to work. It makes little sense in this context to determine with precision the income actually earned by the working recipient, or actually contributed to her support from responsible relatives, and then "assume" an amount of work expenses which leaves her with an "assumed" net income with which to meet her needs but which is

concededly not available to her for that purpose. In short, while *Rosado* held that §402(a)(23) was not inconsistent with a consolidation of special need items into a flat grant, that case lends no support to a completely dissimilar "averaging" of work expenses which states are mandated to disregard under §402(a)(7). *Accord, Conover,* Appendix B; *Adams,* Appendix C; *Campagnuolo,* Appendix D; *Anderson,* Appendix E.

The Welfare Department urges, however, that §402(a)(7) not be interpreted in isolation, and that, considered with other provisions of the Act, it should be read to permit the use of a flat work expense standard to limit the consideration of actual work expenses incurred by the Respondent. The Welfare Department argues that the objectives of administrative efficiency and state-wide uniformity justify its position in favor of a flat standard. While Respondent does not dispute that different sections of the same statute should be read in harmony and interpreted so as to avoid conflict with each other, it is Respondent's view that the statutory objectives advanced by Petitioners can be satisfied *within* the framework of the §402(a)(7) requirement that "any" work-related expenses be considered, and thus they do not justify departure from that plain mandate.[22]

The "administrative convenience" rationale also urged by the Solicitor General, is belied by HEW's own justification for that position. HEW has outlined the

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[22]It should be noted that even in *Rosado* the Court held that the "laudable goal of administrative efficiency" may not be furthered in such a way as to violate a specific statutory command. *Rosado*, 397 U.S. at 417. Thus the Court construed §402(a)(23) in such a way as to permit administrative efficiency *and* satisfy the purpose of that section.

alleged administrative problems attendant upon individualized work expense determination as follows:

> "Payroll deductions vary with the amount of wages, and wages vary with the number of paydays in a month, the number of days the recipient worked, overtime, and many other factors. Other work expense items, such as transportation and lunches, vary similarly with the number of days of work and the other factors which affect payroll deductions, and in addition they may vary according to any number of still other factors. Under an individualized computation, the amount of work expenses for each individual would likely be different every month. For the agency to obtain an adequate accounting of the individualized expenses, to process the changing amounts, to validate and audit, places a severe burden on administration of the program. Increasingly, agencies have neither the staff nor the capability for such an operation." (See Appendix E, p. 15, Brief of California in Support of Petition for Certiorari).

However, each of those determinations must be made *even in those states which choose to standardize work-related expenses.* If wages and days worked frequently vary as HEW argues they do, the assistance grant would have to be recomputed *each* month without regard to work expenses in order to accommodate the changes in income since all available income not specifically exempted must be taken into consideration in the determination of need under §402(a)(7). Moreover, Colorado has *not* standardized payroll deductions, and so, individualized determinations of the kind described by HEW still have to be made and, if HEW is right, have

to be made frequently. Administrative efficiency is thus not furthered by Colorado's program.[23]

Respondent does not argue here that the Welfare Department may not, in furtherance of the objective of administrative efficiency, use a flat amount as a "standard deduction". *Assuming the flat amount to be a reasonable one* (Colorado's is not, see footnote 4, *supra*), Colorado may streamline its system by applying such a deduction to all working recipients subject to permitting such recipients to itemize expenses if greater than the standard. This was the holding in *Adams, Conover, Compagnuolo,* and *Anderson,* and indeed was suggested by the court below:

> "The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence to this standard when a particular family's expenses of employment exceeded the allowance. In such cases, Colorado's standard allowance operated as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. §602(a)(7). Williford v. Laupheimer, E.D. Pa., 311 F. Supp. 720 (three-judge court). Nevertheless, a reasonable interpretation of the statute permits 'a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, provided the allowance is

[23]Indeed, Colorado does not standardize any work expenses for employed food stamp applicants, and so after applying the standard $30 to an AFDC applicant's income, eligibility workers must nonetheless make an individualized determination of those expenses in order to compute that individual's food stamp bonus entitlement. See Colorado Public Welfare Manual, Section C-4421.2-.23 in Appendix G and a copy of the Working Recipient's food stamp worksheet in Appendix H.

adequate to cover all actual expenses.' " *Vialpando v. Shea*, 475 F.2d 731, 735 (10th Cir. 1973) (Single Appendix, pp. 92-93).

A standard so applied would be comparable to the "standard deduction" for federal income tax purposes, see I.R.C. §141, 26 U.S.C. §141, and would provide (in most cases) relief for the Welfare Department from the accounting, processing, validating and auditing which HEW apparently believes places a severe burden on administration of the program.[24] On the other hand, should such a method be adopted, recipients with work expenses in excess of the "standard" would have the option of proving that to an eligibility worker.

Finally, the demands of statewide uniformity, 42 U.S.C. §602(a)(1), (3), may surely be accomplished consistent with our interpretation of §402(a)(7). Respondents do not argue that the determination of work expenses should be made on an *ad hoc* basis, subject to the whim and fancy of particular county departments, or particular caseworkers. It is Respond-

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[24]Respondents wonder how crucial a standard, without provision for demonstrating expenses in excess thereof, is to the efficient administration of the AFDC program. Under §402(a)(5), 42 U.S.C. §602(a)(5), a state AFDC plan "*must . . . provide* (A) Such methods of administration . . . as are found by the Secretary [of HEW] to be *necessary* for the *proper* and efficient operation of the plan. . . ." HEW has not *required* states to use standardized work expense allowances under this section; it is merely an "option." Is this failure to so mandate due to the Secretary's view that such a standard is not "necessary" for efficient operation of the program? If so, we urge that the plain meaning of §402(a)(7) should not be abrogated by HEW's *ad hoc* determination. Indeed, is the "option" afforded the states on the theory that a standard work expense is not "proper" under §402(a)(7)?

ents' position that the State Welfare Department should, indeed *must*, develop criteria of statewide applicability which will be used by all eligibility workers to evaluate requests by welfare recipients for the consideration of particular work expenses. Compare 45 C.F.R. §233.20(a)(2)(v), applicable in the case of special needs.[25]

Even though administrative efficiency is a laudable goal, the state may not implement measures which are inconsistent with the specific requirements of the Social Security Act. See *Rosado v. Wyman*, 397 U.S. 397, 417 (1970).

D. Federal Regulations, Promulgated Contemporaneously with the Enactment of the §402(a)(7) Work Expense Disregard and Codified Thereafter, Require the Disregard of All Reasonable Work Related Expenses.

The Solicitor General in his brief urges this Court to accept the use of statistical averaging to determine work expenses. In doing so, the Solicitor General fails to make any extensive analysis of the statutory language, its legislative history or the federal regulations promulgated by HEW contemporaneously with the enactment of the statute. Those regulations are inconsistent with the interpretation now urged by the Solicitor General.

The HEW regulations start with the fundamental proposition that "only such income as is actually

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[25] 45 C.F.R. §233.20(a)(2)(v) provides as follows:

"If the State agency includes special need items in its standard, (a) describe those that will be recognized, and the circumstances under which they will be included, and (b) provide that they will be considered in the need determination for all applicants and recipients requiring them."

available for current use on a regular basis will be considered. . . ." 45 C.F.R. §233.20(a)(3)(ii)(b). This principle is then applied to work expenses: "income *equal* to expenses reasonably attributable to the earning of income" is not to be regarded as available income. 45 C.F.R. §233.20(a)(3)(iv)(a) (emphasis added). In addition, §233.20(a)(7)(i), describing the method for the disregard of earned income, requires that "all" work expenses, personal and non-personal, be deducted in determining net available income. These regulations do not, obviously, simply "restate" the statutory language as the Solicitor General suggests. (Brief, p. 4). Furthermore, Federal regulations, in defining "earned income" for purposes of applying the earned income exemption separately provided for in §402(a)(8) as the "total amount, irrespective of" personal and non-personal work expenses, merely give *examples* of such work expenses. See 45 C.F.R. §233.20(a)(6)(iv) ("expenses such as . . ."),[26]

These regulations codify HEW's previous requirements contained in the *Handbook of Public Assistance Administration*, Pt. IV, §3140(1), promulgated contemporaneously with the enactment of the work expense disregard of §402(a)(7).[27] The Handbook satisfied the strict requirements of the Social Security Act and the

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[26]It is significant that HEW has merely provided examples of the types of work expenses that are to be disregarded. To have provided an exhaustive list would have violated the controlling criteria that a work expense is any item of expense "reasonably attributable to the earning of income"; such a list would thereby have created an improper limitation on the work expense disregard.

[27]See Single Appendix pp. 4-6.

need for administrative efficiency by providing that while a state agency may establish a reasonable standard money amount to represent costs for extra food, clothing and personal incidentals, since these items are "accepted, common needs of all employed persons," "[i]tems of work expenses must be allowed when there is a determination that such expenses do, in fact, exist *in the individual case*." (Single Appendix, pp. 4-5, emphasis added). The *Handbook* proceeds to list specific examples of expenses which must be allowed when incurred. The Solicitor General agrees that these *Handbook* provisions do require a "higher work expense deduction" when an individual incurs expenses in excess of any standard which may be used. See Solicitor General's Brief, p. 4.

Faced with its contemporaneous and continuous interpretation of the 1962 work expense amendment to §402(a)(7), an interpretation entitled to great weight, *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 315 (1933), HEW seeks to avoid the consequence of this prior construction of the statute both by arguing that the *Handbook* has been superceded, which is not true,[28] and by ignoring the specific language of the above cited regulations which were published by HEW and which purportedly superceded the *Handbook*.

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[28]In the trial court, the state's brief asserted that the *Handbook* had no validity, force or effect. Correctly, the state has changed its position before this Court. (See Petitioner's Brief, p. 24). It is clear that the *Handbook* is still viable as interpretative material to the extent it does not conflict with subsequently codified regulations. When the *Handbook* was codified in 45 C.F.R. §233.20, it was superseded only as a *system* for issuing materials and is thus still an effective statement of agency policy and interpretation. See Appendix F.

The *ad hoc* interpret ation of the statute (i.e. made only in response to laws uits, and not in published form) is entitled to little weig ht given the prior administrative interpretation and Cor gress' failure to disturb that construction over the p ast 12 years. See *U.S. v. Leslie Salt Co.*, 350 U.S. 383 396-97 (1956). The fact that HEW has, by approv ing Colorado's work expense allowance method, give approval to violation of HEW regulations and the autho rizing statute in no way deprives the Court of its powe r to require that the Colorado program be administer ed in accordance with those regulations, which are consistent with the statutory provision and its legislati e history.

The State of Colorad o repeatedly emphasizes that it properly relied upon H W, and, therefore, because the position of HEW shou ld be accorded great weight, enforcement of Colorad o's regulation on work expenses should not be enjoined As the Court below properly observed, this principle is inapplicable when a depart- mental interpretation is inconsistent with the controlling statute. *Vialpando v. Sh ea*, 475 F.2d 731, 735 (1972). See *Townsend v. Swank* 404 U.S. 282, 286 (1971). As the trial court noted, nc amount of deference to HEW's technical knowledge and administrative experience would justify the court rewriti ng §402(a)(7) or contorting its meaning. (Single Append ix, pp. 80-81).[29]

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[29]The Solicitor General a gues that the HEW view has evolved over a period of time, in rec gnition of the practical necessities of administration. (Solicitor G neral's Brief, pp. 4-5). It has been candidly admitted that the Secretary has shifted his position. However, because of the nat re of this proceeding, there has never been any competent evidenc e introduced before the lower courts to support this claim of inc reased efficiency. The parties hereto filed motions for summary j dgment; there were no stipulations of fact that statistically deter mined standard allowances produce

CONCLUSION

The arguments of deference to HEW and increased administrative efficiency miss the issue. The issue is whether or not HEW and Colorado have complied with 42 U.S.C. §602(a)(7). A clear analysis of the statute, its legislative history, the regulations and cases require the judgment for Respondents to be affirmed.

The Courts of Appeal for the Second Circuit, Tenth Circuit and recently the Eighth Circuit support Respondents' position.[30] Congress intended to provide a meaningful incentive for welfare recipients to return to the job market. Mrs. Ascension Vialpando, during the course of this protracted litigation, has taken marginal employment on several occasions, each time returning to a full ADC grant, because the Colorado Department of

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increased efficiency and savings or that Colorado's $30 flat allowance was fairly determined. Nevertheless the State and now the Secretary put forth these factual arguments. The Solicitor General in a footnote improperly refers to a Los Angeles County Work measurement study. Respondents have never seen this study nor been afforded the opportunity to cross examine its authors. (Solicitor General's Brief, p. 5).

[30] *Connecticut State Dept. of Welfare v. HEW*, 448 F.2d 209 (2nd Cir. 1971); *Vialpando v. Shea*, 475 F.2d 731 (10th Cir. 1972); *Anderson v. Graham*, ___ F.2d ___, (8th Cir. Dec. 20, 1973).

Social Services fails to disregard all her reasonable work expenses.

For these reasons, the judgment of the circuit court should be affirmed and a permanent injunction issued against the enforcement of §4313.13, Colorado Division of Public Welfare Manual.

Respectfully submitted,

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APPENDIX A

THE ACTUAL OPERATION OF THE WORK EXPENSE DISREGARD

Section 402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7), requires AFDC state plans thereunder to provide that, in determining the need for assistance of an applicant or recipient, the state agency shall take into consideration any income of such individuals "as well as any expenses reasonably attributable to the earning of any such income." This work expense disregard is separate from and different than the earned income exemption (explained in detail below) provided for in §402(a)(8)(A)(ii) of the Act, 42 U.S.C. §602(a)(8)(A)(ii). Thus, whether or not the earned income disregard of §402(a)(8)(A)(ii) is applicable, work expenses, at the very least, are to be deducted from earned income in determining the amount of net income actually and currently available to meet the needs of a particular assistance family.

As pointed out in the text of the brief, the work expense disregard of §402(a)(7) operates basically in two instances: (1) in determining the eligibility of most applicants for AFDC, and (2) in computing the amount of the assistance payment of recipients and eligible applicants.

In order to determine whether or not an applicant for AFDC is eligible for assistance, his or her *net* earned income must be less than the state's standard of need. 45 C.F.R. §233.20 (a)(7)(ii). "Net earned income" is defined as a family's gross earned income less any work expenses, while a state's "standard of need" is that dollar amount which the state has determined to be necessary to provide a subsistence level of living. See 45 C.F.R. §233.20(a)(3); HEW Handbook of Public Assistance

Administration, Part IV §§3120, 3131. If the net earned income is *greater* than the state's standard of need for that particular family, the family is ineligible for assistance; if the net earned income is *less* than the state's standard of need, i.e., a family does not have enough income to meet its basic needs, the family is eligible for assistance.

For example, an applicant family, whose monthly needs have been determined by the state to be $200, and which has a gross monthly income of $270, mandatory payroll deductions of $25 and other work related expenses of $60, has its eligibility determined in the following manner:

Example #1

Gross Earned Income	$270
Less mandatory payroll deductions	-25
Less other work expenses	-60
Net earned income	$185

Net earned income ($185) being less than the state's standard of need ($200), the family is eligible for assistance.*

Those applicants thus found eligible for AFDC, as well as those already in receipt of AFDC, are entitled to the application of *both* the earned income disregard, as provided for in §402(a)(8)(A)(ii) *and* the work expense disregard, as provided for in §402(a)(7).** The §402(a)

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*This process is likewise described in Colorado State Manual §4313.132.

**It is to be noted that those applicants for AFDC who had received an assistance payment in any one of the previous four months are, like current recipients, automatically entitled to the earned income disregard whether or not their net income is below the standard of need. 42 U.S.C. §602(a)(8)(D), 45 C.F.R. §233.20(a)(11)(ii).

(8)(A)(ii) earned income disregard in the AFDC program requires that the first $30 of the gross monthly earned income, plus one-third of the remainder of such income, of any child, relative or individual whose needs are taken into account in determining the assistance budget, must be disregarded in determining the amount of the assistance grant. 42 U.S.C. §602(a)(8)(A)(ii). Together with the work expense disregard, the earned income disregard operates as specified in 45 C.F.R. §233.20(a)(7)(i):

> Provide that the following method will be used for disregarding earned income: the applicable amounts of earned income to be disregarded will be deducted from the gross amount of "earned income", and all work expenses, personal and non-personal will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

For purposes of illustration, the figures in the previous example are used again, namely, gross earned income = $270; mandatory payroll deductions = $25; other work-related expenses = $60; state's standard of need = $200.

Example #2

Exemptions

Gross earned income	$270
Less $30 + 1/3 earned income exemption	
First $30: 270 - 30 = 240	
1/3 of remainder (240) = 80	
Earned income disregarded (30 + 80)	-110
	$160
Less mandatory payroll deductions	-25
Less other work-related expense	-60
Net available income	$ 75

Assistance Grant

State's standard of need	$200
Less net available income	-75
Assistance grant	$125*

In contrast, the $30 flat allowance for work expenses (other than mandatory payroll deductions) necessarily and adversely affects eligibility for and the amount, if any, of the assistance grant. Thus, in contrast to the above described Example #1, the applicant would be found ineligible rather than eligible for assistance; said applicant, instead of having countable income (gross income less exemptions) of $75, is assumed to have net income ($215) greater than the state's standard of need ($200):

Example #3

Gross earned income	$270
Less mandatory payroll deductions	-25
Less $30 flat work expense allowance	-30
Assumed net income	$215

Were the applicant to meet the four month rule of §402(a)(8)(D), he or she, like the current employed recipient, would nonetheless have his or her grant reduced by operation of the $30 flat allowance:

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*This process is similarly described in Colorado State Manual §4313.131.

Example #4

Exemptions

Gross earned income	$270
Less $30 and 1/3	-110
	$160
Less mandatory payroll deductions	-25
Less $30 standard for other work expenses	-30
Net available income	$105

Assistance Grant

State's standard of need	$200
Less net available income	-105
Assistance grant	$ 95

The resulting assistance grant of $95 should be compared to the $125 grant the recipient would be eligible for were his or her *full* reasonable work expenses disregarded. See Example #2.

APPENDIX B

[Filed Oct. 8, 1971]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

SALLY LEE CONOVER, ALICE ANN LAWRENCE, AND ARLOENE TOSELAND, on behalf of themselves and all others similarly situated, Plaintiffs, vs. JAMES M. HALL, Secretary, Human Relations Agency, State of California; ROBERT B. CARLESON, Director, Department of Social Welfare, State of California, Respondents.	No. 215815 Dept. 9 OPINION ON REQUEST FOR ISSUANCE OF PRELIMINARY INJUNCTION

This Court is being asked to preliminarily enjoin the defendants from taking any action to enforce §28.1 of the Welfare Reform Act of 1971, Cal. Stats., Ch. 578, or any regulation promulgated pursuant thereto or both, insofar as said action would result in the imposition of a $50.00 maximum allowance on work-related expenses exclusive of child care. Under the statutes and regulations in effect in California up until October 1, 1971, recipients of AFDC work supplements were allowed the full amount of their work-related expenses subject only to the limitations imposed by defendants on the amount allowed for personal items such as clothes and lunches ($25.00). These expenses, amongst others included transportation costs, Federal withholding income tax, State Disability Insurance, Social Security (FICA), retirement

contributions, union dues, together with the $25.00 standard deduction for food, clothing and miscellaneous.

Section 28.1 of the Welfare Reform Act of 1971, added §11451.6 to the Welfare and Institutions Code which reads in part as follows:

> "Notwithstanding §11008, any exemptions from earned income for work-related expenses authorized under other provisions of this Chapter shall be limited to a standard allowance of fifty dollars ($50.00) per month plus reasonable and necessary costs of child care. . . ."

It is plaintiff's contention that Section 28.1 of the Welfare Reform Act of 1971, and implemented by State Regulation filed September 29, 1971 (Ex. Def. C) is contrary to and inconsistent with supervening Federal law, specifically §402(a)(7) of the Social Security Act of 1935, as amended, 42 USC §602(a)(7) and implementing regulations which require that a certain portion of earned income will be disregarded in determining the amount of public assistance payments in order to provide welfare recipients an incentive to obtain employment to enable them to attain or retain capability for self-support. Federal statute requires that ". . . . the State agency shall, in determining need, take into consideration . . . . any expenses reasonably attributable to the earnings of such income." 42 USC §602(a)(7). Plaintiffs place great reliance for their position upon U.S. statutes, Federal cases and the recent California Supreme Court decision of County of Alameda vs. C.W.R.O. ___Cal.3rd___ at page wherein the Court said with approval "A similar issue was raised in Willeford . . . . wherein the State of Pennsylvania attempted to impose a $50.00 maximum upon the work-related expenses deductions under Section 602, subdivision (a)." The Court agreed (quoting from Willeford vs. Loupheimer, 311 F. Supp. 720 (E.D. P.A. 1969)

that the limitation was not permitted by the Act and HEW regulations thereunder, and concluded as follows: "We think it obvious that the fifty dollar limitation on income deductions is inconsistent with the express provisions of the Social Security Act. The imposition of such a maximum deduction violates the clear Congressional directive that the States shall allow deductions for "any expenses reasonably attributable to the earning of any such income."

The California Supreme Court also said in County of Alameda vs. C.W.R.O. (supra) at page 33: "The legislative history underlying the work-related expenses deduction provision indicates that it was the intent of Congress to permit the exclusion of *all* such expenses, without regard to the amount expended, provided that such expenses were reasonably related to employment."

It is the State's position that the language of Section 28.1, "shall be limited to standard allowance of fifty dollars ($50.00) per month," is not a limitation of work-related expense in non-conformity with Federal statutes and regulations, but rather a standard allowance for work-related expenses, created for administrative convenience in implementing the Social Security Act and permissible under the authority of Rosado vs. Wyman, 397 U.S. 397, Amos vs. Engleman (D.C.N. 4 1970), County of Alameda vs. C.W.R.O. ___ Cal. 3rd. ___ and the opinion of Phillip Schafer, Regional Commissioner of the U.S. Department of Health, Education and Welfare.

However, this Court is of the opinion that defendants are misconstruing Rosada vs. Wyman, 397 U.S. 397, in concluding that the Court's approval of a state drawing a statistical average of individual variation in a standard of need can be translated to §402(a)(7) of the Act to support a fifty dollar ($50.00) maximum. Such a conclusion would be in contradiction of the express

language of USC 402(a)(7) which requires that a state take into consideration "any expenses reasonably attributable to the earnings of such income."

It appears to this Court that the Congressional requirement that consideration be given to "any expense reasonably attributable to the earning of such income" precludes a fifty dollar ($50.00) maximum absent some provision to permit allowance of expense in excess of the fifty dollars in the individual case where properly substantiated. It therefore appears to the Court that §28.1 of the Welfare Reform Act of 1971 and the implementing regulation (Def. #C) adopted September 29, 1971 are invalid.

The Request for Issuance of a Preliminary Injunction is hereby granted.

DATED: Oct. 8, 1971.

/s/ _____
PRESIDING JUDGE OF
THE SUPERIOR COURT

APPENDIX C

[Filed Apr. 14, 1972]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTINE ADAMS, Individually and On Behalf of All Others Similarly Situated, Plaintiff	:	
EDITH ABRAMS, Applicant for Intervention as Plaintiff	:	CIVIL ACTION NO. 16041
vs.	:	
T.M. PARHAM, Individually and In His Official Capacity as Director of the State Department of Family and Children Services, Defendant	:	

ORDER

In this suit brought under 42 U.S.C. §1983, plaintiffs challenge the State of Georgia's plan for Aid to Families with Dependent Children (AFDC) as violative of 42 U.S.C. §602(a)(7) and Social Security Regulations. Jurisdiction is conferred upon the Court by 28 U.S.C. §1343(3). Pursuant to Fed. R. Civ. P. 65(a)(2), the Court consolidated the hearing on plaintiffs' motion for preliminary injunction with the trial on the merits. At the January 18, 1972, hearing, the Court ruled that the suit could proceed as a class action with plaintiff Adams and intervenor Abrams as class representatives, and issued

temporary injunctive relief with respect to the individual parties. The Court allowed the parties to file briefs and allowed the Department of Health, Education and Welfare to file a brief as *amicus curiae*. The case is submitted for final adjudication.

Under Section 407(a)[1] of the Social Security Act of 1934, as amended, states which choose to participate in the jointly-funded AFDC program, in determining eligibility, are obliged to consider the earned income of employed individuals who apply for or receive benefits. In assessing the amount of income, however, the same statute requires the states to consider "any expenses reasonably attributable to the earning of any such income." Pursuant to these requirements, the Georgia AFDC Plan provides that employed AFDC applicants and recipients have deductions from earned income as follows: (1) actual cost of child care; and (2) a flat amount of $35 for all other employment expenses.[2] Plaintiffs contend that the "flat amount" provision does not meet federal statutory requirements.

The State's reasons for using the standard deduction for work-related expenses are stated as follows:

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[1] "(a) A State plan for aid and services to needy families with children must . . . (7) . . . provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual living in the same home as such child and relative whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; . . ." 42 U.S.C. §602(a)(7).

[2] In addition, as required by 42 U.S.C. §402(a)(8), the first $30 of the combined earned monthly income of all individuals whose needs are included in an AFDC grant plus one-third of the remaining is disregarded in determining eligibility.

"1. To significantly reduce the incident of error in this area which was repeatedly disclosed by Quality Control findings and as an incidence to other internal agency studies.

"2. To reduce to a minimum staff time and effort required to determine net income.

"3. To expedite the disposition of case actions (applications, special reviews, and redeterminations of eligibility), so as to make a payment to the recipient in the *correct* amount at the earliest possible date.

"4. To eliminate the impossible task of over 3,000 caseworkers in the 159 county offices applying to each individual recipient's factual situation the test of work-related expenses '*reasonably attributable*' to producing such income (much like a 'proximate cause' determination in tort cases—where do you draw the line) resulting in gross inequities between recipients in reasonably similar circumstances."[3]

The Court is aware of the increasing administrative problems which attend the implementation of the various public assistance plans which the State of Georgia administers in cooperation with the federal government. The Court also recognizes the desire and obligation of the State to operate the AFDC program as efficiently as possible. The use of the standard deduction, no doubt, would help achieve this result. At the same time, however, the State's AFDC Plan must comply with federal requirements. *E.g., King v. Smith*, 392 U.S. 309 (1968).

At least two other courts have had occasion to consider substantially the same issue involved here. In

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[3]Defendant's Reply Brief at 10.

Williford v. Laupheimer, 311 F. Supp. 720 (E.D. Pa. 1969), a three-judge court held Pennsylvania's maximum deduction ($50 per month) for work-related expenses invalid as inconsistent with Section 402(a)(7) of the Social Security Act. In *Vialpando v. Shea*, ___ F. Supp. ___ (No. C-2449, D. Colorado, January 13, 1972), the Court invalidated Colorado's flat amount ($30 per month) deduction for work-related expenses for the same reason.

Despite the understandable position of the State and the official approval of the Department of Health, Education and Welfare,[4] the Court cannot reconcile use of the standard deduction for work-related expenses with the legislative history and language of Section 402(a)(7) of the Social Security Act and regulations promulgated pursuant thereto. While the allowance of a flat, standardized amount for certain expenses (*i.e.*, food, clothing and personal incidentals) may comport with Section 402(a)(7),[5] an issue which is not before the Court, the use of such a flat amount for *all* expenses does not comply with federal requirements. The use of such an arbitrary amount necessarily implies lack of consideration of amounts in excess thereof. *Vialpando v. Shea, supra;*

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[4]The deference normally accorded the statutory interpretation of the federal agency which implements a particular statute (See *e.g., Morningside Lenox Park v. Volpe*, 334 F. Supp. 132 (N.D. Ga. 1971); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)), is not warranted here where the language and legislative history of the statute cannot, in the Court's opinion, be reconciled with the interpretation given by HEW. See *Vialpando v. Shea, supra*, order of March 9, 1972.

[5]See Handbook of Public Assistance Administration, IV - 3140.1; *Vialpando v. Shea, supra.*

Williford v. Laupheimer, supra; cf., Olsen v. Child, ___ F. Supp. ___, 2 CCH Pov. L. Rep. ¶13,201 (D. Idaho, 1970). Accordingly, defendant is hereby enjoined from using the flat work expense allowance of $35 per month as a maximum allowable amount in computing the earned income of employed AFDC applicants and recipients. Defendant shall not be precluded from taking appropriate steps to have the Georgia AFDC Plan modified to comply with federal requirements as set forth in this order nor from using the allowance as a standard deduction subject to right of individual recipients or applicants to show entitlement to a larger allowance. The effect of this injunction is hereby stayed for ten days.

Insofar as individual relief for the named parties herein, it appears that both parties' work expenses exceed the $35 limit. The Court, however, will not attempt to determine what work expenses are "reasonably attributable" to the earning of their income. In light of the ruling that the use of the standard deduction as a maximum allowance contravenes the requirements of the federal statute, plaintiff Adams and intervenor Abrams are entitled to have their earned income recomputed and are entitled to whatever benefits are due to them, by virtue of recomputation, retroactive to December 1, 1971.

The Court has hitherto ruled that this suit could be maintained as a class action on behalf of all AFDC applicants and recipients whose work-related expenses exceed $35 per month, and the plaintiffs have requested relief for the class as follows:

"1. All persons who have been denied full AFDC benefits pursuant to the requirements set forth in 45 C.F.R. §233.20(a) are to be given retroactive assistance back to December 1, 1971.

"2. All persons who applied for AFDC after

December 1, 1971, and were denied because of excess income are to be notified by first class mail by March 1, 1972, that they are entitled to have their applications recomputed according to federal requirements and, if eligible, reinstated as of the month their application was denied; and

"3. All persons whose AFDC grants were terminated on or after December 1, 1971, are to be notified by first class mail by March 1, 1972, that they are entitled to have their eligibility redetermined by federal requirements and, if found eligible, are to be reinstated as of the date of termination."[6]

The defendant has made no argument or suggestion as to the requested class retroactive relief. Aside from the question of whether or not retroactive benefits for the represented class is warranted, such relief undoubtedly would impose a considerable burden upon the State. It would appear that the granting of such relief, in the final analysis, would reduce funds available for AFDC benefits. Accordingly, the Court deems it appropriate that the defendant be given the opportunity to show cause, if any there be, within ten days from the filing of this order, why the class relief requested by the plaintiffs' should not be granted and, alternatively, the defendant's suggestions as to the method of implementing such relief should it be granted. The plaintiffs, of course, within five days of the filing of defendant's brief, may respond to defendant's contentions and suggestions.

SO ORDERED, this 14th day of April, 1972.

Charles A. Move, Jr.
UNITED STATES DISTRICT JUDGE

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[6]Plaintiffs' Supplemental Brief at 20-21.

APPENDIX D

[Filed June 22, 1972]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHY CAMPAGNUOLO, on her behalf and on behalf of her minor daughter DAWN MARIE CAMPAGNUOLO, and all others similarly situated	:	
-vs-	:	Civil No. 13,968
HENRY C. WHITE, individually and as Commissioner of Welfare of the State of Connecticut	:	

RULING ON DEFENDANT'S MOTION FOR CLARIFICATION OF INJUNCTION

This case involves the method used by the defendant, Connecticut Commissioner of Welfare, to determine work-related expenses for recipients of welfare in the Connecticut program of Aid to Families with Dependent Children (AFDC). The prior extensive court proceedings will not be reviewed here. See *Campagnuolo v. Harder* (later White), 319 F. Supp. 414 (D. Conn. 1970), *remanded*, 440 F.2d 1225 (2d Cir. 1971); Orders of this court of June 8, June 30 and October 7, 1971. See also, *Connecticut State Welfare Dept. v. Department of Health, Educ. & Welfare*, 448 F.2d 209 (2d Cir. 1971). Jurisdiction is provided by 42 U.S.C. §1983 and 28 U.S.C. §1343(3) on the basis of the plaintiffs' claim of a denial of equal protection; the court is concerned here, however, only with the pendent claim of a violation of

federal statute and regulations of the Department of Health, Education & Welfare (HEW).

The court's Ruling on Motion for Contempt and Other Relief of October 7, 1971, provided that, for purposes of determining eligibility for AFDC assistance and computing the amount of assistance required, the defendant

> "shall exclude from income work expenses reasonably attributable to the earning of income. 45 C.F.R. §233.20(a)(3)(iv)(a). Examples of the work expenses to be included are personal expenses such as income tax deductions, lunches, and transportation to and from work; and expenses of employment which are not personal, such as cost of tools, materials, special uniform or transportation to call on customers. 45 C.F.R. §233.20(a)(6)(iv)."

On October 1, 1971, the defendant implemented a new method of computing work-related expenses as follows:

> "*Expenses of Employment*
>
> "The amount recognized for expenses of employment in all programs is $60 per month when a person works an average of more than 20 hours per week on a monthly basis. If a person works an average of 20 hours or less per week on a monthly basis the amount recognized is $40 per month . . . .
>
> "The expense of employment standard is the amount which is allowed for *all* expenses of employment other than the cost of child care and is to cover personal expenses such as mandatory payroll deductions, lunches, and transportation and non-personal expenses such as the cost of tools, special clothing or uniforms, etc." Connecticut State Welfare Manual Vol. 1 (hereinafter Manual) §332.31.

The defendant seeks a clarification of the injunction which is in force in this case, so as to permit the use of the standard amounts for work-related expenses. The

plaintiffs claim that such a flat amount for work-related expenses is impermissible under federal statute, 42 U.S.C. §602(a)(7), and HEW regulation, 45 C.F.R. §233.20(a)(3)(iv)(a). Title 42 U.S.C. §602(a)(7) requires the state, in determining eligibility and need for welfare assistance, to "take into consideration . . . any expenses reasonably attributable to the earning of . . . income." By regulation, HEW requires the state to "(p)rovide that, in determining the availability of income and resources, the following will not be included as income: (a) Income equal to expenses reasonably attributable to the earning of income . . . ."

Upon the request of the court, HEW submitted a brief as amicus curiae, in which it supports the use of the flat allowance for work expenses. On the basis of *Hosado v. Wyman*, 397 U.S. 397 (1970), the defendant and HEW argue that the state is permitted to consolidate and average work expenses and make a flat allowance therefor and that the $60 and $40 amounts are reasonable.

In interpreting 42 U.S.C. §602(a)(7), the Court of Appeals for the Second Circuit has held that "*all* expenses reasonably attributable to the earning of income . . ." must be excluded from the computation of available income in determining eligibility and need. *Connecticut State Welfare Dept. v. Department of Health, Educ. & Welfare, supra*, 448 F.2d at 216 (emphasis added). The court there approved *Williford v. Laupheimer*, 311 F. Supp. 720 (E.D. Pa. 1969), where a three-judge district court ruled that §602(a)(7) prohibited the imposition by Pennsylvania of a maximum deduction for work-related expenses.

More recent cases have been decided similarly. In *Vialpando v. Shea*, Civ. No. C-2449, Memorandum Opinion (D. Colo. Mar. 9, 1972), the court held that Colorado's flat allowance for work expenses violated §602(a)(7). The court stated:

> "If the question before us were whether a flat grant system would simplify and streamline the AFDC program, then we might well be persuaded that it would. Were we deciding the wisdom of creating a 'consumption incentive' by not rewarding welfare recipients who cut down on their work-related expenses, our conclusion might be that this was not a wise policy. But these are not the questions before this court; we are asked to interpret §402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7) . . . .
>
> "We would show deference to HEW's factual conclusions that a flat grant may be a more efficient way to deal with work expenses, but we cannot agree with its legal conclusion that §402(a)(7) allows this." *Id.* at 2-3.

And in *Adams v. Parham*, Civ. No. 16,041, Memorandum of Decision at 4 (N.D. Ga. Apr. 14, 1972), the court held that

> "the Court cannot reconcile use of the standard deduction for work-related expenses with the legislative history and language of Section 402(a)(7) of the Social Security Act and regulations promulgated pursuant thereto."

The instant case is indistinguishable from these cases. See also, *Conover v. Hall*, No. 215,815 (Dept. 9, Superior Ct., Sacramento, Calif., Oct. 8, 1971).

The court holds that §602(a)(7) prohibits the defendant from imposing a limit on the amount of work-related expenses by the use of a flat allowance. Accordingly, the defendant is hereby enjoined from using the flat work expense allowance of $60 and $40 per month, Manual §332.31, as a maximum allowable amount in computing the earned income of employed AFDC recipients and applicants. The defendant is not precluded from using the flat allowances as standard deductions subject to the right

of individual recipients or applicants to show entitlement to larger allowances. This was the holding in *Adams v. Parham, supra.*

The defendant has moved for the designation of additional class representatives on the ground that the earnings of the named plaintiff are so high as to make her unrepresentative of the class of AFDC working recipients. In view of the holding above, the motion is denied. The ability of the named plaintiff to prove work-related expenses in excess of $60 per month does not prejudice other AFDC recipients with lower expenses, since the court does not hold that a standard allowance for work-related expenses is violative of the federal statute; the court merely holds that such a standard allowance may not be used to create a maximum, beyond which the recipient's expenses may not be allowed. Used as a standard allowance simply, and not as a maximum, the amounts of $60 and $40 per month are found by the court to be reasonable, on the basis of the expert opinion of HEW.

The case of the named plaintiff, however, illustrates what seems to the court a curious effect of the income-disregard provisions of the AFDC program. See 42 U.S.C. §602(a)(8). Katherine Campagnuolo is employed as a legal secretary at a salary of $520 per month. The total needs of her family, which consists of herself and one child, have been determined by the defendant to be $262.03 per month. Her eligibility for AFDC benefits is determined under Manual §332.32 (A)(1), which provides:

> "If AFDC has been received for any *one* of the *four* preceeding (sic) months:
>
> * * * * *
>
> "c. Disregard $30 of the total earned income of other family members (than students), plus 1/3 of the remainder of their income.

"d. From the balance of earned income after completing steps a. through c. deduct the appropriate employment expense standard for all family members employed other than students referred to in a. & b. above.

"e. If available income from all sources is less than need, the family is eligible for assistance."[1]

The named plaintiff has submitted an affidavit in which she claims work-related expenses of $209.34 per month.[2] Assuming these expenses are allowed,[3] the computation of her eligibility and need is as follows:

(1) $520.00
-30.00
$490.00

(2) $\frac{\$490.00}{3} = \$163.33$

(3) $490.00
-163.33
$326.67

(4) $326.67
-209.34
$117.33

(5) $262.08 (need)
-117.33 (available income)
$144.75 (award)

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[1]If AFDC benefits have not been received within the last four months, eligibility is determined simply by subtracting work-related expenses from gross income, and if the result is less than budgeted need, the applicant is eligible for assistance. Manual §332.32(A)(2). The income disregard provisions are applied, however, in determining the amount of the AFDC award.

[2]These expenses are: federal withholding tax, $63.30; Social Security tax, $23.04; transportation to and from work, $43.00; lunches, $40.00; clothing necessary to employment, $20.00; personal items necessary to employment, $15.00.

[3]The court does not pass upon whether the named plaintiff is entitled to have all these expenses allowed, in the amount claimed by her.

Thus, the plaintiff has a total gross income each month of her salary of $520 plus her AFDC award of $144.75, or a total of $664.75, assuming that her employment expenses are allowed. She and her child are also eligible for Title XIX medical assistance, which is in her case quite substantial, according to the testimony of this case.

Assuming constant work-related expenses, the named plaintiff would have to receive a salary of about $740 per month to become ineligible for AFDC payments.[4] If her salary were $730 per month, she would still be eligible for AFDC and Title XIX benefits, assuming that employment expenses of $209.34 remained constant and were allowed. At that level the incentive to go to work is certainly present. At the same time, it is easy to see that the income disregard provisions of the AFDC program would discourage her from accepting any salary increment which would make her ineligible for welfare. How to solve the underlying problem of removing from the welfare roles those who could earn income sufficient to terminate eligibility is for Congress to decide. But imposition by the defendant of an arbitrary limit of $60 for work-related expenses to accomplish that result in this case is not permissible.

The defendant's motion for clarification of the injunction in this case to allow exercise of Manual §332.31 is granted to the extent that the amounts specified therein may be used as standard deductions for work-related expenses, and denied to the extent that applicants and

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[4](1) $\$740.00 - \$30.00 - \frac{\$710.00}{3} = \$236.66$ (exempt income under work-incentive regulations)

(2) $\$710.00 - \$236.66 - \$473.34 - \$209.34 = \$264.00$, which exceeds her budgeted need for $262.08 by $1.92.

recipients are prohibited from showing work-related expenses in excess of the standard amounts. The defendant's motion for the designation of additional class representatives is denied.

Since the defendant's flat allowances for work-related expenses were put into effect on October 1, 1971, there is a substantial possibility that since that date working AFDC recipients had their awards reduced or were found ineligible[5] for continued assistance and that applicants for AFDC assistance were denied eligibility because of the defendant's limitation on work-related expenses. The defendant is thus ordered to notify these classes of persons that they may have their assistance payments recomputed or their eligibility redetermined, with retroactive benefits to be paid accordingly.

SO ORDERED.

Dated at Hartford, Connecticut, this 22nd day of June, 1972.

M. Joseph Blumenfeld
Chief Judge

[5]The application of the $60 limitation on work expenses resulted in the named plaintiff's being notified that she was no longer eligible for AFDC assistance. On April 11, 1972, this court enjoined the defendant from terminating AFDC and Title XIX assistance to her pending the decision in this case; but this injunction ran only in favor of the named plaintiff.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 73-1441 & 73-1466

Fred Anderson, for himself and his minor children; Janice Anderson, Jeannette Anderson and Fred Anderson, Jr., on behalf of themselves and all others similarly situated, Appellants, v. Lawrence L. Graham, Director of Public Welfare, individually and in his official capacity, Appellee.	*	Appeal from the United States District Court for the District of Nebraska

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Submitted: November 15, 1973.
Filed: December 20, 1973.

Before VAN OOSTERHOUT and MOORE*, Senior Circuit Judges, and WEBSTER, Circuit Judge.

VAN OOSTERHOUT, Senior Circuit Judge.

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*LEONARD P. MOORE, Senior Circuit Judge, Second Circuit, sitting by designation.

This action is brought by plaintiff Fred Anderson, a Nebraska Aid for Dependent Children (AFDC) recipient for himself, his minor children, and all others similarly situated, against Lawrence L. Graham, Nebraska Director of Public Welfare, individually and in his official capacity. Plaintiff's attack is directed at the Nebraska $25.00 standard business expense allowance for employed AFDC recipients who have incurred employment-related expenses exceeding $25.00. Jurisdiction is based on 42 U.S.C. §1983.

Plaintiff seeks to enjoin the application of the Nebraska standard business expense allowance as being in violation of 42 U.S.C. §602(a)(7) and the regulations promulgated thereunder. Plaintiff also seeks retroactive payment of AFDC benefits based upon a consideration of all reasonable work-related expenses actually incurred.

The Nebraska plan determines net income by the following method:

A. Determine gross earned income;
B. Subtract $30.00, plus one-third of the remainder as work incentive disregard, pursuant to 42 U.S.C. §602(a)(8);
C. Subtract state income tax, federal income tax, and social security tax withholding;
D. Subtract actual necessary child care costs;
E. Subtract a work expense standard of $25.00 per employed person.

The result of this computation is the net income of the welfare recipient used to determine eligibility and the amount of AFDC payments due if any. The only item included in the foregoing computation in dispute is item "E", the standard work expense allowance of $25.00 given to each employed recipient. The deduction is standard throughout the State of Nebraska and includes the following categories:

1. Transportation to and from work and to and from a child care center or baby sitter;

2. union dues;
3. employee's fund, retirement, insurance, pensions, charity;
4. extra or special clothing, uniforms;
5. cost of materials, cosmetic supplies booth rental;
6. cost of tools and equipment;
7. overhead business expenses;
8. licenses;
9. required contributions for employees benefits; and
10. special lunches while workin

This case was tried before Judge Urbom on motions for summary judgment filed by both parties. The record consists of pleadings, defendant's answer to plaintiff's request for admission of facts, plaintiff's answer to interrogatories, and pretrial conference. Both parties state that there is no dispute as to material facts.

At a pretrial conference on November 24, 1972, counsel stipulated that the work-related expenses of the plaintiff Fred Anderson exceed $25.00 per month. Counsel agreed that the sole issue on the plaintiff's motion for a summary judgment is whether a state may standardize work-related expense in determining the amount of net income of employed AFDC recipients, without regard to the validity or the invalidity of any studies made by the state in formulating the standard.[1]

Anderson, an AFDC recipient, was employed at the Offutt Air Force Base. Prior to 1972 Anderson was receiving AFDC payments based upon his family's budgetary need. Anderson was a widower. His family consisted of four minor children, one of whom became

[1] It was also understood at the pretrial conference that if plaintiff's motion for summary judgment is overruled, an evidentiary hearing would be held upon the validity of the method by which the State determined the amount of the standard deduction.

eighteen years of age in 1972 and left home and became self-sustaining. On February 24, 1972, it was determined that the budgetary need no longer exceeded Anderson's income. Such determination was brought about by limiting Anderson's deductible work expense deduction to the standard $25.00 allowance. While some of Anderson's work-related expense items may be in dispute, defendant admits work-related expenses exceeded $25.00. It is undisputed that the following monthly work-related expenses were paid through payroll deductions:

Retirement	–	$40.41
Union Dues	–	5.42
Health and Disability Benefits	–	39.04
Life Insurance	–	5.95

In addition, Anderson testified by deposition that he drives a distance of 350 to 400 miles per month to and from his work station and that the reasonable expense for such travel is ten cents per mile, and that he incurs expenses for uniforms and food purchases while at work. These categories are recognized as work expenses by HEW as specified in Handbook of Public Assistance Administration, §3410.

Anderson in his deposition taken on December 22, 1972, testified that he employed his sister-in-law, Ruth B. Delsee, to care for his minor children at a cost of $100.00 per month. After defendant produced a certified copy of certificate showing marriage of Anderson and Ruth B. Delsee on the 26th of August, 1972, plaintiff filed a response admitting such marriage and further conceded that as a result of such change in circumstances, he became ineligible for future AFDC payments. Anderson states that he intends to proceed with this action for declaratory relief and retroactive benefits for himself and on behalf of the class he represents.

On December 13, 1972, Shirley Von Dorn filed motion to intervene as party plaintiff, stating that she was a member of the class represented by Anderson. Such leave was granted by the trial court. Mrs. Von Dorn was an AFDC recipient who incurred work-related expenses exceeding $25.00 per month. The court permitted the action to proceed as a class action. No attack has been made upon such ruling.

A final judgment was filed on June 12, 1973, adjudicating as follows:

> 1. The standard $25.00 per month allowance for expenses reasonably attributable to the earning of income for welfare recipients, as set forth in the Plan and Manual of the Nebraska Department of Public Welfare, violates §402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7), insofar as the standard does not take into consideration all expenses reasonably attributable to the earning of income for those welfare recipients who may have expenses in excess of the $25.00 per month standard, and is declared void pursuant to 28 U.S.C. §2201 and Rule 47 of the Federal Rules of Civil Procedure.
>
> 2. The defendant, Lawrence L. Graham, individually and in his official capacity, his officers, employees, agents and successors in office are restrained from failing to consider, in accordance with §402(a)(7) of the Social Security Act, 42 U.S.C. §602(a)(7), any and all expenses reasonably attributable to the earning of income in establishing financial eligibility and the amount of assistance payments of employed applicants and recipients of Aid to Families with Dependent Children (AFDC). Under this order, the defendant, his officers, employees, agents and successors in office are restrained from failing to consider, by reason of the

$25.00 per month standard work-expense allowance, as contained in the Nebraska State Plan and Manual, any and all expenses reasonably attributable to the earning of income which are in excess of said $25.00 per month standard allowance or in any other way limiting the consideration of expenses reasonably attributable to the earning of income. Nothing herein shall preclude the defendant, his officers, employees, agents and successors, from using a $25.00 per month work-expense allowance as a standard deduction for work-related expenses (covering all such expenses, except child care, income tax withholding, and Social Security tax withholding, which expenses shall be considered separately), provided that employed AFDC applicants and recipients are informed of their right to have considered any and all expenses reasonably attributable to the earning of income which are in excess of the $25.00 per month standard allowance.

3. This judgment confers no right on the plaintiffs to retroactive payments.

A well-reasoned memorandum opinion was filed by Judge Urbom setting out the facts, the issues and the basis of decision.

Plaintiff has taken a timely appeal from paragraph "3" of the judgment which determines plaintiffs have no right to retroactive payment of AFDC payments wrongfully withheld. Defendant has cross-appealed from paragraphs "1" and "2" of the judgment invalidating the standard $25.00 work expense allowance with respect to welfare recipients who can establish work-related expenses in excess of $25.00 per month, and the portion of the judgment restraining the defendant from refusing to consider all expenses reasonably attributable to the earning of income and determining eligibility and amount of assistance payments due employed applicants for AFDC payments.

We affirm on plaintiff's appeal and on defendant's cross-appeal for reasons hereinafter set out. The cross-appeal will be considered first as the retroactive issue only arises if we affirm on the cross-appeal.

Defendant's Cross-Appeal.

Plaintiff's contention, upheld by the trial court, is that defendant's action in limiting business expenses related to earnings to $25.00 in situations where such expense exceeds $25.00[2] is a violation of 42 U.S.C. §602(a)(7) which provides that states which participate in the AFDC program must have a plan which takes into consideration in determining a need the income of any child or relative claiming aid "as well as any expenses attributable to the earning of such income."

The judicial construction of §602(a)(7) properly begins by looking at the text of the statute itself. *United States v. Bass*, 404 U.S. 336, 339 (1971). As stated by the Second Circuit in *Connecticut State Department of Public Welfare v. Department of Health, Education, and Welfare*, 448 F.2d 209, 216 (2d Cir. 1971), the statute

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[2]We reiterate, as did the trial court, that the attack on the Nebraska standard earning expense allowance is limited to situations where AFDC applicants or recipients claim and prove expense attributable to earned income in excess of the $25.00 standard deduction. In many cases the standard deduction will be greater than actual work expense. Work expense incurred in earning income will necessarily vary greatly. One who has to travel a substantial distance to the scene of his employment will ordinarily incur far more expense for transportation than one whose work station is within a few blocks of his home. One who must supply his own tools or provide a uniform will incur business-related expense not incurred by persons who do not have to provide such items.

clearly provides that all expense reasonably attributable to the earning of income must be excluded from the computation of available income in determining eligibility and need. Additionally the legislative history of the enactment of §602(a)(7) fully supports the trial court's interpretation of the statute.[3]

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[3]In 1962 President Kennedy proposed changes in the public assistance program which stressed "service instead of support, rehabilitation instead of relief, and training for useful work instead of dependency." Hearings on H.R. 120032 before the House Ways and Means Committee, 87 Cong., 2d Sess. (February 1962), p. 2.

Secretary Ribicoff in a letter to the Speaker of the House stated, "To encourage assistance recipients to participate in the community work and training programs or take regular employment, full consideration of the additional expenses of employment would be required." *Id.* at p. 2.

He further states:

> Under current Federal policy, while States are required to consider any income and resources (with certain exclusions in the case of Title X of the Social Security Act) in determining need, they are encouraged but not required to take into consideration expenses incurred in earning income. All public assistance titles of the act would be changed by the bill to require the consideration of necessary expenses that may reasonably be attributed to earning income. These changes would not become effective until July 1, 1962. [*Id.* at p. 28.]

In the hearings before the Senate Finance Committee, Secretary Ribicoff in response to a question from Senator Curtis stated:

> * * * What we are trying to do, Senator Curtis, is do everything we can to encourage people to get a job and work and we feel it is important to encourage the States. By having this provision, the State will take into account these expenses so people will get jobs. I believe that the State should give them an allowance for those items that are necessary for them to get a job.

Hearings before the Committee on Finance, U.S. Senate, 87th Cong., 2d Sess. (May 1962) p. 152.

The Senate Report on the bill which includes §602(a)(7) subsequently enacted explains the purpose of the mandatory work expense disregard law as follows:

Chief Judge Lewis of the Tenth Circuit in *Vialpando v. Shea*, 475 F.2d 731, 735 (10th Cir. 1973), in a well-reasoned opinion supported by persuasive authority, faces the same issue presently before us and thus interprets §602(a)(7):

> A state must compare its standard of need to the income and resources actually available to the particular family in order to establish financial eligibility and the amount of an AFDC grant. 45 C.F.R. §233.20(a)(3)(ii)(*a*) and (*c*). 43 U.S.C. 602(a)(7) requires that the computation of income and resources available to the particular family must take into consideration any expenses reasonably attributable to the earning of income. To uniformly apply a standardized employment expense allowance rather than consider actual expenses in this

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Under the present law, all income of recipients of public assistance is taken into account (with a limited exception under Title X) in determining need. States are permitted, but not required, to take into consideration the expenses an individual has in earning any income (this practice is not uniform in the country and in a substantial number of States full consideration of such expenses is not given). The Committee believes that it is only reasonable for the States to take these expenses fully into account. Under existing law if these work expenses are not considered in determining need, they have the effect of providing disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter. The bill has, therefore, an added provision in all assistance titles requiring the State to give consideration to any expense reasonably attributable to the earning of income. [Senate Report No. 1589, 87th Cong., 2d Sess. U.S.C.C.A.N. 1943, 1959-1960.]

The House Report, H.R. No. 1414, 87th Cong., 2d Sess., 23 (1962), contains in essence the same language.

computation would render meaningless the process of comparing a particular family's available income and resources with a hypothetical family's standard of need.

The problem with the Colorado system is not its use of a standardized allowance but the intransigent adherence to this standard when a particular family's expenses of employment exceed the allowance. In such cases, Colorado's standard allowance operates as a maximum allowance which we also consider to be inconsistent with 42 U.S.C. §602(a)(7). Williford v. Laupheimer, E.D. Pa., 311 F. Supp. 720 (three-judge court). Nevertheless, a reasonable interpretation of the statute permits "a state to use a standard deduction for [employment] expenses in the interest of efficient administration of the [AFDC] program, *provided the allowance is adequate to cover all actual expenses.*"

We fully agree with such interpretation.[4]

Judge Lewis in *Vialpando* for valid reasons there stated has properly rejected all contentions here made on the work expense issue.

We agree with the trial court's determination that §602(a)(7) requires the State of Nebraska to deduct all reasonable work-related expenses in all instances where

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[4]We note that the Supreme Court granted certiorari November 5, 1973, No. 72-1513, *Shea v. Vialpando*, 42 L.W. 3270. Considerable time may elapse before the Supreme Court reaches the case for decision. The trial court has granted a stay during the pendency of this appeal. We hold in the next division that plaintiff and members of the class are not entitled to retroactive payment against the State in a federal suit. We believe that under all the circumstances here raised, the parties are entitled to a prompt decision in this court. See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Like v. Carter*, 448 F.2d 798, 804 (8th Cir. 1971).

such expenses exceed the standard $25.00 deduction in determining the amount of net income available to AFDC recipients, and we affirm the trial court on such issue.

Retroactive Payment.

Judge Urbom denied retroactive payment of deficiencies in AFDC payments brought about by the State's failure to consider work-related expenses in determining eligibility and amount of AFDC benefits. He reached this result on the basis of *Rothstein v. Wyman*, 467 F.2d 226 (2d Cir. 1972). All aspects of the retroactive payment issue are there fully considered and such payments are denied on the basis of persuasive authorities cited and discussed. In *Rothstein*, as here, the action was brought against the head of the State social welfare department. *Rothstein*, in Division III at p. 236 of 467 F.2d, determined that retroactive payments constituted a claim against the State and that such payments were thus barred by the Eleventh Amendment. We agree.

In *Employees of the Department of Public Health & Welfare v. Department of Public Health & Welfare*, 452 F.2d 820 (8th Cir. 1971), state hospital and training school employees brought an action against the Welfare Department to recover overtime compensation due under the Fair Labor Standards Act. We held that *Maryland v. Wirtz*, 392 U.S. 183 (1968), determined that the employees were entitled to the overtime pay they were demanding but that federal courts by reason of the Eleventh Amendment lacked jurisdiction to grant relief. We discussed at length the history, purpose and scope of the Eleventh Amendment. We also determined that the State by continuing to operate its institutions did not waive its Eleventh Amendment immunity to federal suit. The Supreme Court affirmed. *Employees v. Missouri Public Health Department*, 411 U.S. 279 (1973). The

Court held that the Fair Labor Standards Act made no express provision for depriving the states of their Eleventh Amendment immunity and held that the State by continuing to operate its institutions did not waive its Eleventh Amendment rights.

The holding in *Employees* fully applies to the instant case. As observed in *Rothstein, supra,* p. 238 of 467 F.2d:

> Congress has not explicitly conditioned the grant of such funds upon the willingness of the recipient state to waive the immunity from suit provided by the Eleventh Amendment; nor are retroactive payments so necessary to the effectuation of congressional policies that a waiver arises by implication.

In *Like v. Carter,* ___ F.2d ___ (8th Cir., Nov. 1, 1973), we held:

> We agree with the district court's view that on jurisdictional grounds, the Eleventh Amendment bars any award for lost welfare benefits because of the failure of the state to pay claims within the prescribed time period of 30 days.

We are aware of *Jordan v. Weaver,* 472 F.2d 985 (7th Cir.), *cert. denied sub. nom. Edelman v. Jordan,* 412 U.S. 937 (1973), which supports plaintiff's position on the retroactive issue. That case was decided prior to the decision of the Supreme Court in *Employees v. Missouri Public Welfare Department, supra,* and is inconsistent with that decision on the Eleventh Amendment issue. The result reached in *Jordan* is also contrary to that reached by this Court in the cases heretofore cited.

We hold that plaintiff's suit for retroactive benefits is in effect a suit against the State, that the State has not waived its immunity, and hence the Eleventh Amendment deprives the federal court of jurisdiction to award a

money judgment against the State for the retroactive payments here claimed.

As noted by the Supreme Court majority opinion in *Employees*, we are here concerned only with the constitutional restraints of the judicial power of the United States courts under the Eleventh Amendment and not with the issue of whether plaintiff could recover in a state court, see concurring opinion, p. 298 of 411 U.S., or in a suit by the federal government. Thus the judgment for dismissal of the claim for retroactive benefits will be modified to show that it is based upon lack of jurisdiction by reason of the Eleventh Amendment and as so modified, the judgment of dismissal will be affirmed.

The order of the trial court staying the injunction and all proceedings to enforce its judgment pending appeal is terminated.

Modified and affirmed on plaintiff's appeal. Affirmed on defendant's cross-appeal.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX F

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

OFFICE OF THE ADMINISTRATION

Aug. 13, 1970

Mr. Henry A. Freedman
Senior Attorney
Center on Social Welfare Policy and Law
401 West 117th Street
New York, New York 10027

Dear Mr. Freedman:

Your letter of July 2, 1970, has been received in which you have commented on the regulations which represent codification of rules contained in the Handbook of Public Assistance.

As you have noted in your letter, there was no intention of making basic changes in the policies previously in effect. Only the specific provisions contained in the requirements for State plans were used.

It is intended that other materials now contained in the Handbook of Public Assistance will be issued subsequently as interpretive guides. Consideration will be given, however, to incorporating in the final regulation certain statements previously contained in the criteria or interpretation sections of the Handbook.

We appreciate your review of this material and assure you that your suggestions with regard to the various policy

subjects cited will be given careful review prior to issuance of the final regulation.

Thank you for your review of the proposed regulation and for your various comments.

Sincerely yours,

/s/ John D. Twiname
John D. Twiname
Administrator

APPENDIX G

COLO. DIVSN. PUB. WELFARE STAFF MANUAL - VOL. IV PUBLIC ASSISTANCE FORMS PART C FORMS USED IN OTHER PUBLIC ASSISTANCE PROGRAMS	C-4421.2 – C-4421.23
FOOD STAMP PROGRAM APPLICATION, ELIGIBILITY AND AUTHORIZATION	Effective: May, 1971 T.L. # 1129 Supersedes: T.L. #1120

C-4421.2 FORM FS-2, "CERTIFICATION WORK SHEET – PA HOUSEHOLDS."

This form is used to record the net income available for the purpose of determining the amount of the purchase requirement and bonus. The form is also used to determine the appropriate period of certification or recertification. For further details see Vol. IV, 4612.321. The form is attached to the case file copy of the Form FS-4, "Notice of Action" for the period of certification covered.

The caseworker or eligibility technician completes one copy of the form. The form is designed so that the first part, concerning household identification, can be completed at the same time as the Form FS-4, by using a carbon and overlay it with the Form FS-4. Separation should then be made to complete the balance of each form. The spaces and blocks of the household information section provide general information pertinent to the certification status of the household. Note: The household composition must be the same as that reflected on the RS700 to use this form, i.e. all members of the household must be receiving public assistance.

This form must be completed on each certification and recertification of a public assistance household and is made a permanent part of the case record. Supplies of this form are to be obtained from the printer.

C-4421.21 PA INCOME.

Enter the amount of assistance grant (money payment) available to the household, the category and effective date of the RS700.

Enter the monthly amount of take-home pay from employment, and show the source and verification of the amount.

Enter the monthly amount of income received from any other source, and show the source and how verified.

C-4421.22 DEDUCTIONS FROM PA INCOME.

All deductions are to show the average monthly amount and how it was verified that the amount was paid out.

Documentation substantiating the need for hardship deductions are entered on the reverse side of the form. These deductions must be approved by the county director or supervisor (Vol. IV, 4612.631).

C-4421.23 PURCHASE REQUIREMENTS AND BONUS.

The total net income is the amount used in determining the purchase requirement and bonus of the household. (See Vol. IV, 4612.631 and 4212.9)

APPENDIX H

FS-2 (12-70)
OUT WEST COLO 8088

El Paso DEPARTMENT OF WELFARE
FOOD STAMP PROGRAM

FOOD STAMP WORKSHEET – PUBLIC ASSISTANCE HOUSEHOLDS

PLACE OF PURCHASE

PA ☑ NON PA ☐ CONS ☐

NAME (HEAD OF HOUSEHOLD FIRST-MIDDLE-LAST): Delpardo, Ascension

NO. IN HH.: 3

HH. NO.: 038100 02

COOKING FACILITIES: YES ☑ NO ☐

ADDRESS: 320E Dove

ZIP CODE

SOC. SEC. NO: —

TELEPHONE NO.: —

AUTHORIZED REPRESENTATIVE OR PROXY: —

APP. IS: APPROVED ☐ DENIED ☐

APP. STATUS: NEW ☐ RECERT ☑ REINSTATE ☐ REOPEN ☐ H.H. HEAD CHANGE ☐ TRANSFER IN ☐

RACIAL/ETHNIC GROUP CODE (VOL. IX SEC. 9122.284):

PA INCOME, VOL. IV SECT. 4612.63	AMOUNT	VERIFICATION, COMMENTS, REMARKS
1. AMOUNT OF PA GRANT	$ 101 53	ADC (Reimbursed 92.47)
2. MONTHLY INCOME FROM EMPLOYMENT	$ 232.07	IJ Consr
3. MONTHLY INCOME FROM ANY OTHER SOURCE (OASDI, ETC.)	$	
4. TOTAL PA INCOME (ADD LINES 1 THRU 3)	$ 333 60	
DEDUCTIONS FROM PA INCOME		
5. ACTUAL HOUSING COST, ACTUAL UTILITIES AVERAGED (OR ADC AUTHORIZED UTILITIES)	101 67 ~~$ 97 67~~	$85 00 Rent 12 67 Utl 97 67 + 4 00 Heat 101 67
6. 30% OF LINE 4	$ 100 08	
7. EXCESS SHELTER COSTS. IF LINE 5 IS LARGER THAN LINE 6, SUBTRACT LINE 6 FROM LINE 5. IF LINE 5 IS LESS THAN LINE 6, NO AMOUNT SHOULD BE ENTERED	$ 1.79	
8. COST OF NECESSARY CHILD CARE OR HOUSEKEEPING SERVICES	$ —	
9. VERIFIED PAYMENTS FOR MEDICAL OR DENTAL CARE, MEDICINE, PROSTHETIC DEVICES, ETC. NOT BEING PAID BY THE COUNTY	$ —	
10. APPROVED DEDUCTIONS FROM FUNDS RECEIVED (INCOME) FROM OEO PROGRAMS, ELEM. AND SEC. EDUC. PROGRAMS, AND GOV'T SPONSORED TRAINING PROGRAMS	$ —	
11. HARDSHIP DEDUCTIONS (APPROVED BY COUNTY DIRECTOR OR SUPERVISOR)	$ —	
12. EXCESS TRANSPORTATION COSTS RELATED TO EMPLOYMENT	$ 19.40	$0 weekly mileage 43 240 320 34 40 - 15 00 19 40
13. OTHER APPROVED DEDUCTIONS (EXPLAIN IN REMARKS COLUMN)	$ 12 00	uniform
14. TOTAL DEDUCTIONS FROM PA INCOME (ADD LINES 7 THRU 13)	$ 33 19	
15. PA INCOME CONSIDERED FOR FOOD STAMPS (SUBTRACT LINE 14 FROM LINE 4)	$ 300 41	
PURCHASE REQUIREMENTS AND BONUS, VOL. IV SECTION 4612.9		
16. TOTAL INCOME AVAILABLE TO HOUSEHOLD (LINE 15)	$ 300 41	
17. FOOD STAMPS PURCHASE PRICE (CASH REQUIREMENT)	$ 66 00	
18. BONUS FOOD STAMPS	$ 18 00	
19. TOTAL FOOD STAMPS	$ 84 00	

PERIOD OF CERTIFICATION, VOL. IV SECT. 4612.51 FROM THRU

TECHNICIAN'S NAME: T Mabry

POSITION NO.: 19 0 11

DATE OF DETERMINATION: 10 01 71

PURCHASE PLAN: ☑ MO. ☐ SEMI MO. ☐ WEEKLY

Syllabus

SHEA, EXECUTIVE DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF COLORADO, ET AL. *v.* VIALPANDO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 72–1513. Argued February 26, 1974—Decided April 23, 1974

Section 402 (a)(7) of the Social Security Act requires state agencies in administering the Aid to Families with Dependent Children (AFDC) program to "take into consideration . . . any expenses reasonably attributable to the earning of . . . income." Such expenses are deducted from an AFDC applicant's income in determining eligibility for assistance. Colorado's AFDC regulations, which previously had permitted the deduction from income of all expenses reasonably attributable to employment, including transportation expenses, were amended in 1970 to subject work-related expenses (with certain exceptions) to a uniform allowance of $30 per month. This substantially reduced respondent's monthly deductions for work-related transportation expenses and the corresponding increase in her monthly net income made her ineligible for continued AFDC assistance. She then brought this action for injunctive and declaratory relief, claiming, *inter alia*, that Colorado's standardized work-expense allowance violated § 402 (a)(7). The District Court granted summary judgment for respondent, and the Court of Appeals affirmed. *Held:* The Colorado regulation conflicts with § 402 (a)(7) and is therefore invalid. Pp. 258–266.

(a) In light of the statute's legislative history and the normal meaning of the term "any," the language of § 402 (a)(7) requiring the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance is to be interpreted as a congressional directive that no limitation, apart from that of reasonableness, may be placed upon recognition of work-related expenses, and hence a fixed work-expense allowance that does not permit deductions for expenses exceeding that standard directly contravenes the language of the statute. P. 260.

(b) Standardized treatment of work-related expenses without provision for showing actual and reasonable expenses exceeding the standard amount threatens to defeat the purpose of the

mandatory work-expense recognition provision of § 402 (a)(7) of encouraging AFDC recipients to secure and retain employment, since by limiting work expenses to $30 per month the Colorado regulation results in a disincentive to seek or retain employment for all recipients whose reasonable work-related expenses exceed or would exceed that amount. Pp. 263–265.

(c) It is not the adoption of a standardized work-expense allowance *per se* that violates § 402 (a)(7), but the fact that the standard is in effect a maximum or absolute limitation upon the recognition of such expenses. P. 265.

475 F. 2d 731, affirmed.

POWELL, J., delivered the opinion for a unanimous Court.

Douglas D. Doane and *Charles B. Lennahan*, Special Assistant Attorneys General of Colorado, argued the cause for petitioners. With them on the brief were *John P. Moore*, Attorney General, *John E. Bush*, Deputy Attorney General, and *Norman A. Palermo*.

Tom W. Armour argued the cause for respondent. With him on the brief were *James W. Kin*, *Steven J. Cole*, and *Henry A. Freedman*.

MR. JUSTICE POWELL delivered the opinion of the Court.

In administering the Aid to Families with Dependent Children (AFDC) program of the Social Security Act of 1935, as amended (Act), 42 U. S. C. § 601 *et seq.*, state agencies are required by § 402 (a)(7) of the Act, 81 Stat. 881, 42 U. S. C. § 602 (a)(7), to "take into consideration . . . any expenses reasonably attributable to the earning of . . . income." Such employment-related expenses are deducted from an AFDC applicant's income in the process of determining eligibility for assistance. We granted certiorari, 414 U. S. 999 (1973), to determine whether, in light of § 402 (a)(7), a State may adopt a standardized allowance for expenses attributable to the

earning of income which does not allow an applicant to deduct expenses that exceed the standard. We hold that it may not.

I

The AFDC program is designed to provide financial assistance to needy dependent children and the parents or relatives who live with and care for them. A principal purpose of the program, as indicated by 42 U. S. C. § 601, is to help such parents and relatives "to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . ." The program "is based on a scheme of cooperative federalism," *King* v. *Smith*, 392 U. S. 309, 316 (1968). It is financed in large measure by the Federal Government on a matching-fund basis, and participating States must submit AFDC plans in conformity with the Act and the regulations promulgated thereunder by the Department of Health, Education, and Welfare (HEW). The program is, however, administered by the States, which are given broad discretion in determining both the standard of need and the level of benefits. See *Jefferson* v. *Hackney*, 406 U. S. 535, 541 (1972); *Rosado* v. *Wyman*, 397 U. S. 397, 408–409 (1970); *Dandridge* v. *Williams*, 397 U. S. 471, 478 (1970); *King* v. *Smith*, *supra*, at 318–319.

Under HEW regulations all AFDC plans must specify a statewide standard of need, which is the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level. Both eligibility for AFDC assistance and the amount of benefits to be granted an individual applicant are based on a comparison of the State's standard of need with the income and resources available to that applicant. 45 CFR § 233.20 (a)(2)(i). The "income and resources" attributable to an applicant, defined in 45 CFR §§ 233.20 (a)(6) (iii–viii),

When this suit was commenced in July 1970, Mrs. Vialpando was employed some eight miles from the small Colorado community in which she resided with her two-year-old daughter. Since no public transportation was available, respondent traveled to and from work each day in a used automobile she had purchased for that purpose. In making the requisite eligibility and assistance determinations under the Colorado AFDC program, Mrs. Vialpando had been permitted to deduct $47.30 in mileage costs and $63.81 in car payments[4]

F. 2d 986 (CA8 1973) (Nebraska $25 standard work-expense allowance); *Connecticut State Dept. of Pub. Welfare* v. *HEW*, 448 F. 2d 209 (CA2 1971) (Connecticut regulation limiting the types of deductible work-related expenses); *Adams* v. *Parham*, Civil Action No. 16041 (ND Ga. Apr. 14, 1972) (unpublished) (Georgia $35 standard work-expense allowance); *Campagnuolo* v. *White*, Civil Action No. 13968 (Conn. June 22, 1972) (unpublished) (Connecticut $60 standard allowance for full-time employment expenses and $40 standard allowance for part-time employment expenses); *Williford* v. *Laupheimer*, 311 F. Supp. 720 (ED Pa. 1969) (Pennsylvania $50 maximum allowance for work expenses); *County of Alameda* v. *Carleson*, 5 Cal. 3d 730, 488 P. 2d 953 (1971), appeal dismissed, 406 U. S. 913 (1972) (California work-expense regulation providing for standard deductions ranging from $6 to $25 per month). In *X* v. *McCorkle*, 333 F. Supp. 1109 (N. J. 1970), modified on other grounds, *sub nom. Engelman* v. *Amos*, 404 U. S. 23 (1971), the court approved in *dicta* New Jersey's $50 standard work-expense allowance. In *Conover* v. *Hall*, 104 Cal. Rptr. 77 (1972), decision vacated pending appeal in California Supreme Court, the court upheld California's $50 standard allowance.

[4] Colorado did not make it a statewide practice to allow AFDC recipients to deduct installment payments on the purchase of a car. Consistent with the reasonableness requirement of 42 U. S. C. § 602 (a)(7), such determinations were, quite correctly, made on a case-by-case basis. As counsel for the State commented at oral argument: "This was an individual decision in an individual case in El Paso County, Colorado. The same facts could have been presented to an eligibility technician in another part of Colorado, who would have made a decision . . . that the car was a personal expense, that a

from her monthly gross income. These deductions of approximately $110 per month, coupled with child care and mandatory payroll deductions, entitled her to an AFDC grant of $74 per month for herself and her daughter. The effect of the July 1970 amendment of the Colorado AFDC regulations was to reduce respondent's monthly deductions for transportation expenses related to employment from $110 to $30. The corresponding increase in her monthly net earned income rendered her ineligible for continued AFDC assistance.[5]

Respondent thereupon brought this class action in the United States District Court for the District of Colorado under 42 U. S. C. § 1983 and 28 U. S. C. §§ 1343 (3) and (4). She sought the convening of a three-judge District Court, and requested injunctive relief and a declaratory judgment that the Colorado standardized work-expense allowance violated § 402 (a)(7) of the Act and the Equal Protection Clause of the Fourteenth Amendment. Named as defendants were the Executive Director of the Colorado Department of Social Services and other state

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job was available closer to the home of the recipient or that she could use public transportation." Tr. of Oral Arg. 33–34.

Respondent correctly concedes the State's responsibility for inquiring into whether claimed deductions are excessive or are truly attributable to the earning of income. Brief for Respondent 4. No doubt a State should scrutinize with particular care claimed expenses for automobiles or other items that in large measure are capital expenditures which will also be used for personal purposes unrelated to employment. Recognizing that States in administering AFDC programs must determine the reasonableness of work-related expenses does not, however, resolve the issue before us—whether States may ban all such expenses, no matter how reasonable and necessary, above a fixed cutoff figure.

[5] Another effect of the change in the State's AFDC regulation was to terminate respondent's eligibility for participation in Colorado's medical assistance program under Title XIX of the Social Security Act, 42 U. S. C. § 1396a (a)(10).

officers involved in administering Colorado's AFDC program. Upon stipulated facts and in reliance upon § 402 (a)(7) of the Act, the District Court in an unreported order granted respondent's motion for summary judgment and enjoined enforcement of the challenged regulation.[4] Finding the pendent federal statutory claim dispositive, the District Court properly did not reach the constitutional issue and properly did not convene a three-judge court. *Hagans* v. *Lavine*, 415 U. S. 528 (1974).

The United States Court of Appeals for the Tenth Circuit affirmed. 475 F. 2d 731 (1973). Relying on the language and the legislative history of § 402 (a)(7) and on other provisions of the Act, the court interpreted the words "any expenses" in § 402 (a)(7) to mean "all actual expenses," and held that the standardized allowance did not meet this requirement. The court reasoned that the statute could be read to permit the use of a standardized allowance for employment expenses, but only where such an allowance was adequate to cover all actual expenses. We agree.

II

The Social Security Act of 1935, as originally enacted, 49 Stat. 620, did not expressly require that States allow AFDC beneficiaries to deduct from gross income expenses incurred in connection with the earning of income. The precursor to § 402 (a)(7), which appeared in the 1939

[4] While the case was pending in the District Court, respondent terminated her employment and again received an AFDC grant. Prior to the summary judgment hearing, she returned to work, again incurring work-related expenses substantially in excess of the $30 allowance. Although respondent continued to receive a grant despite her renewed employment, the amount was significantly lower than it would have been if she had been permitted to deduct work expenses in full.

amendments to the Act, 53 Stat. 1379, provided simply that:

> "[T]he State agency shall, in determining need, take into consideration any other income and resources of any child claiming aid to dependent children."

The Social Security Board, the federal entity then overseeing the categorical public assistance programs, soon recognized that under the predecessor of the AFDC program [7] recipient families with working members incurred certain employment-related expenses that reduced available income but were not taken into account by the States in determining eligibility for AFDC assistance. In keeping with the Act's purpose of encouraging employment even when the income produced thereby did not eliminate entirely the need for public assistance, the Board recognized that a failure to consider work-related expenses could result in a disincentive to seek or retain employment. Accordingly, the States were permitted but not required to allow credit for work-related expenses in determining eligibility.[8]

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[7] The AFDC program was originally known as "Aid to Dependent Children." 49 Stat. 627. In 1962, the name of the program was changed to "Aid and Services to Needy Families with Children," and the name of the assistance provided under the program changed to "Aid to Families with Dependent Children." Pub. L. 87-543, 76 Stat. 185, §§ 104 (a)(1) and 104 (a)(2).

[8] Section 3140 of the HEW Handbook of Public Assistance Administration, Part IV (1957), thus provided in part:

"A State public assistance agency may establish a reasonable minimum money amount to represent the combined additional cost of three items—food, clothing, and personal incidentals—for all employed persons. The State plan may provide that other items of work expense will be allowed when there is a determination that such expenses do, in fact, exist in the individual case."

See also Social Security Board, Bureau of Public Assistance, State Letter No. 4 (Apr. 30, 1942); HEW, State Letter No. 291 (Mar. 11, 1957) (indicating agency approval of such deductions).

of need in each case is to be based upon an assessment of the particular individual's available income and resources. Moreover, individualized consideration of available income and resources is clearly contemplated by HEW regulations providing for the exclusion of such items as scholarship funds and loans, see 45 CFR §§ 233.20 (a)(3)(ii–vii), and requiring that certain items such as food stamps be deducted, 45 CFR § 233.20 (a)(4). Thus, if income and expenses related to the production of income are to be treated alike, as the terms of § 402 (a)(7) appear to require, both must be considered on an individualized basis.[11]

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individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from 'earned income'); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment . . . .

"(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

"(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources."

[11] Petitioners claim that HEW has permitted the use of standard work-expense allowances in recognition of the practical necessities of administration and that the Department's construction of its own regulations is entitled to great weight. See *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969); *Udall* v. *Tallman*, 380 U. S. 1 (1965). But the sound principle of according deference to administrative practice normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations. See, *e. g.*, *Townsend* v. *Swank*, 404 U. S. 282, 286 (1971). In view of the literal requirements of § 402 (a)(7), which accord with the

The literal import of § 402 (a)(7) is confirmed by the statute's legislative history. The congressional purpose in requiring the States to take into consideration employment expenses was clearly set forth in S. Rep. No. 1589, 87th Cong., 2d Sess., 17–18 (1962), which explained that:

> "Under present law . . . States are permitted, but not required, to take into consideration the expenses an individual has in earning any income (this practice is not uniform in the country and in a substantial number of States full consideration of such expenses is not given). The committee believes that it is only reasonable for the States to take these expenses *fully* into account. *Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter.* The bill has, therefore, added a provision in all assistance titles requiring the States to give consideration to any expenses reasonably attributable to the earning of income." (Emphasis added.)

Virtually identical language appears in the House Report. See H. R. Rep. No. 1414, 87th Cong., 2d Sess., 23 (1962).

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federal policy underlying its enactment, we need not look to agency practice in this case. Moreover, HEW itself has not adhered to a uniform practice. Although in recent years HEW has construed § 402 (a)(7) to permit standardization of some items, in 1964 it required that "[i]tems of work expenses must be allowed when there is a determination that such expenses do, in fact, exist in the individual case." HEW, Handbook of Public Assistance Administration, Part IV, § 1340 (1964).

Congress thus sought to encourage AFDC recipients to secure and retain employment by requiring the States to take into account fully any expenses attributable to the earning of income in determining eligibility for assistance. Such expenses reduce the level of actually available income, and if not deducted from gross income will not produce a corresponding increase in AFDC assistance. Failing to allow the deduction of reasonable expenses might well discourage the applicant from seeking or retaining employment whereby such expenses are incurred. Section 402 (a)(7) was aimed at removing this disincentive. As then Secretary of HEW Ribicoff explained the legislation in testimony before the Senate:

> "[W]e are trying to do . . . everything we can to encourage people to get a job and work and we feel it is important to encourage the States. By having this provision, the State will take into account these expenses so people will get jobs. I believe that the State should give them an allowance for those items that are necessary for them to get the job." Hearings on the Public Assistance Act of 1962 before the Senate Committee on Finance, 87th Cong., 2d Sess., 152 (1962).[12]

Standardized treatment of employment-related expenses without provision for demonstrating actual and reasonable expenses in excess of that standard amount,

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[12] Our interpretation of § 402 (a)(7) is also supported by the disinclination of the Congress to amend the section to permit the use of various standardized allowances. See H. R. 16311, 91st Cong., 2d Sess., § 101 (1970); H. R. 1, 92d Cong., 1st Sess., § 401 (1971). In explaining the latter bill, which would have replaced the present work-expense provision with an increase in the earned income disregard of § 402 (a)(8)(A)(ii), the Committee on Ways and Means observed that it "would eliminate the open-ended work expense exclusion . . . ." H. R. Rep. No. 92-231, p. 177 (1971). See also S. 2311 and H. R. 3153, 93d Cong., 1st Sess. (1973).

such as Colorado has adopted, threatens to defeat the goal Congress sought to achieve in adopting the mandatory work-expense recognition provisions of § 402 (a)(7). By limiting employment expenses to $30 per month, the Colorado regulation results in a disincentive to seek or retain employment for all recipients whose reasonable work-related expenses exceed or would exceed that amount. Accordingly, the Colorado regulation conflicts with federal law and is therefore invalid.

It is, of course, not the adoption of a standardized work-expense allowance *per se* which we hold to be violative of § 402 (a)(7) of the Act, but the fact that the standard used by Colorado is in effect a maximum or absolute limitation upon the recognition of such expenses. As the Court of Appeals correctly observed, a standard allowance would be permissible, and would substantially serve petitioners' interests in administrative efficiency, if it provided for individualized consideration of expenses in excess of the standard amount. See 475 F. 2d, at 735. See also *Anderson* v. *Graham*, 492 F. 2d 986 (CA8 1973); *Adams* v. *Parham*, Civ. No. 16041 (ND Ga. Apr. 14, 1972) (unpublished); and *Campagnuolo* v. *White*, Civ. No. 13968 (Conn. June 22, 1972) (unpublished). Such a standard allowance would comport fully with the statutory requirement that any reasonable work expenses be considered, and would allow individualized treatment where necessary.[13]

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[13] The Court's observation in *Rosado* v. *Wyman*, 397 U. S. 397, 419 (1970), that "[w]e do not, of course, hold that New York may not, consistently with the federal statutes, consolidate items on the basis of statistical averages . . . ," was in no sense intended as a blanket approval of the principle of averaging under AFDC programs without regard to what is being averaged. In that case, the Court found a New York statute fixing maximum AFDC allowances per family and eliminating a "special grants" program, to be in contravention of § 402 (a)(23) of the Act. In holding that New

As the Court has previously observed, the AFDC program is an area in which Congress at times "has voiced its wishes in muted strains and left it to the courts to discern the theme in the cacophony of political understanding." *Rosado* v. *Wyman*, 397 U. S., at 412. But as to reasonable expenses attributable to the earning of income, Congress has spoken with firmness and clarity.

The judgment is affirmed.

It is so ordered.

York could not completely eliminate such items from the standard of need, the Court noted that the State could, consistently with the statute, include them through the use of statistical averages. A statewide standard of need is, however, but an estimate by state welfare officials of the minimum financial requirements of a hypothetical family, and by its very nature is susceptible of computation through the use of statistical averages. Moreover, the discretion granted the States by Congress in determining need, see *King* v. *Smith*, 392 U. S. 309, 318 n. 14 (1968), contrasts sharply with the statutory requirement of § 402 (a) (7) that any expenses reasonably attributable to the earnings of income be considered. In the face of that statutory command and the clear statement of congressional purpose, we must also reject petitioners' claims of administrative efficiency or convenience. See *Rosado* v. *Wyman*, *supra*, at 417.

We also note that Colorado's use of a standard work-expense allowance is not justified by its undisputed power to set the level of benefits under the AFDC program. See *Rosado* v. *Wyman*, *supra*; *Jefferson* v. *Hackney*, 406 U. S. 535 (1972). Although Colorado may adjust the percentage of need which it has agreed to pay all recipients through its power to determine AFDC funding, see *King* v. *Smith*, *supra*, it may not do so in a manner that violates a specific requirement of the Act. See *Connecticut State Dept. of Pub. Welfare* v. *HEW*, 448 F. 2d 209 (CA2 1971).